

BOLLES' MANUAL

— FOR —

BUSINESS CORPORATION MEETINGS

FOUNDED ON THE JUDICIAL INTERPRETATION
OF THE RULES OF PARLIAMENTARY LAW

APPLICABLE TO

ALL THE STATES OF THE UNION AND TO CANADA

BY

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WITH AN APPENDIX CONTAINING THE
RULES OF PARLIAMENTARY LAW

Based on the work of Luther S. Cushing
Edited and revised by Albert Sidney Bolles

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TO L. F. LOREE

*President of the Delaware and Hudson
Company*

This work is dedicated as a mark of the author's regard for his eminently successful career as a railway manager, and also for his scholarly presentation in the press of many of the great questions of the day.



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for
Business Corporation Meetings



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INTRODUCTION

This work covers a field not within the scope of any other parliamentary manual. It contains a full legal exposition of all the matters mentioned in Cushing's Manual of Parliamentary Practice, by all the courts of last resort in the United States and Canada, as well as all the decisions of the courts of Great Britain deemed applicable to the subject. A slight comparison of this work with any parliamentary manual will show its usefulness. Thus, in the ordinary parliamentary manual very little attention is given to the time and place of the meetings of associations, yet these matters have been the subject of frequent judicial inquiry and decision. What meetings, if any, can a business corporation hold outside the state of its incorporation is a live question, asked

constantly, but to which no answer can be found in parliamentary manuals.

The qualifications and duties of inspectors of elections are of growing complexity and importance. Likewise, the mode of holding meetings, the selection and duties of the chairman, the rule of the majority, the right of discussion at meetings, the rights of absentees, and how their absence affect the legality of a meeting's proceedings. Who can vote, is another question with many applications, to trustees, executors, option holders, corporations, pledgors and pledgees of stock, etc. Much of the voting nowadays is done by proxies. Many questions have arisen concerning them, all of which are answered in this book. There is a chapter also on voting, the rights of corporations to vote, and all the judicial decisions relating to cumulative voting. Voting agreements have been the subject of frequent judicial inquiry. The courts have greatly modified their earlier

views, and the present state of the law is here fully set forth. Beside these matters, many others, pertaining to elections, by-laws, remedies for impending improper action, or for acts unlawfully done, keeping of the minutes, etc., render this a needful book to every business corporation.

The Appendix comprises the full text of Cushing's Manual of Parliamentary Practice.

CHAPTER I.

The Time and Place of Meetings.**Sect. 1. Time of Meeting.**

1. Election on Specified Day.—The statutes fixing the time for electing directors generally are regarded not as mandatory, but directory. Therefore, if the meeting for their election is not held on the regular day, it may be held at a later day, and the directors then chosen, if there be no other irregularity or infirmity in their title, will be directors *de jure*.¹

2. Hour of Holding Meeting.—A meeting should be held at the time appointed, and not at an earlier hour, for, if thus wrongly held, all the proceedings may be

¹ *Beardsley v. Johnson*, 121 N. Y. 224, 228 (1890), citing *Vandenburgh v. Broadway Underground R. Co.*, 29 Hun 348 (1883); *Hughes v. Parker*, 20 N. H. 58 (1849); *Nashua Fire Ins. Co. v. Moore*, 55 N. H. 48 (1874).

void. Thus stockholders were notified on one occasion to meet in a specified place at twelve o'clock for the election of directors. The meeting was called to order and organized fifteen minutes earlier. As against the members who did not participate in the meeting, this action was irregular and void. Consequently, the election of directors was declared to be invalid.² Nor can the irregularity of holding a meeting in advance of the time specified in the notice be cured by reorganizing the meeting at the appointed hour, if in fact there is no abandonment of the room, and no formal organization of a new meeting in the ordinary way.³ But if a by-law provides for the election of officers at a fixed hour, members who participate in the election cannot complain should it be held after the time thus fixed.⁴

3. Two Meetings at the Same Hour and Place.—Suppose the notice for the meeting

² *People v. Albany and Susquehanna R. Co.*, 55 Barb. 344 (1869), affirmed 57 N. Y. 161.

³ *Ibid.*

⁴ *Hussey v. Gallagher* 61 Ga. 86 (1878).

designated the hour and place at which another meeting is to be held, is the regularity of the meeting thereby affected? The judicial answer is: "This would not affect the regularity of the corporate meeting unless the rights of some persons entitled to attend and participate therein were affected."⁵

4. Changing Time for Holding Annual Meeting.—If directors are required to be elected annually and hold office until their successors are elected and qualified, a majority cannot extend their term of office by changing the time for the annual meeting of stockholders.⁶

5. Time of Meeting May be Waived.—It is sometimes desirable to hold a meeting without giving the length of notice required by statute or by-law.⁷ Can this be done? Thus, a statute required that thirty days' notice of a stockholders' meeting must be given to create a mortgage. Such a notice

⁵ *People v. African Wesleyan M. E. Church*, 156 N. Y. App. Div. 386 (1913).

⁶ *Nathan v. Tompkins*, 82 Ala. 437 (1887).

⁷ See No. 15, 25, 41.

can be expressly waived by the stockholders: or impliedly by the corporation, by using the property thus acquired.⁸ In Missouri, corporations by the unanimous concurrence of all the stockholders in meeting assembled, may increase their capital stock or bonded indebtedness without giving the sixty days' notice of the time and place of such meeting required by the constitution and statute.⁹

Sect. 2. Place of Meeting.

6. Is Usually Fixed by Charter or Statute.

—Generally the place of meeting is fixed by charter or statute, and this requirement must be observed.¹⁰ For, if a meeting is held at a different place, it will be irregular

⁸ *Bridgeport Electric and Ice Co. v. Meader*, 72 Fed. 115 (1895); *The Vigilancia*, 68 Fed. 781 (1895). See also *Wood v. Corry Water Works Co.*, 44 Fed. 146 (1890).

⁹ *State v. Cook*, 178 Mo. 189 (1903); *Riesterer v. Horton Land and Lumber Co.*, 160 Mo. 141 (1901).

¹⁰ See No. 16, 31.

and its action void.¹¹ Likewise when the place of meeting has been legally changed, an election of trustees or directors at the old place is invalid.¹²

If the place is made still more specific and the requirement is not observed, what then? Suppose a by-law requires the meetings of a corporation to be held in its counting room, are they valid if held elsewhere? It has been decided that if they are held at the dwelling home of the general agent or clerk, without stating in the records of the corporation that this was the counting room, a court will presume that, for the time being, this was the counting room.¹³

7. Meetings Outside the State.—In recent years the question has been asked with increasing frequency, can a corporation

¹¹ *American Primitive Society v. Pilling*, 24 N. J. Law, 653 (1855); *Stockholders of Shelby R. Co. v. Louisville, etc., Co.*, 75 Ky. 62 (1876); *Reilly v. Oglebay*, 25 W. Va. 36 (1884).

¹² *Miller v. English*, 21 N. J. Law, 317 (1848).

¹³ *McDaniels v. Flower Brook Mfg. Co.*, 22 Vt. 274 (1850).

hold meetings outside the state of its incorporation? In several states the courts have decided that this cannot be done.¹⁴ They may indeed do business in another state by virtue of the great rule of comity, but this has no application to corporation meetings. In a well-considered case the court said: "It is, to say the least, doubtful whether or not a state could grant a corporation the right to change its residence to another sovereignty of its own will, and there exist and perform its corporate functions."¹⁵ "The doctrine that a corporation must exist in the place of its

¹⁴ *Craig Silver Co. v. Smith*, 163 Mass. 262, 265 (1895); *Miller v. Ewer*, 27 Me. 509 (1847); *Freeman v. Machias Water Power and Mill Co.*, 38 Me. 343 (1854); *Hilles v. Parrish*, 14 N. J. Eq. 380 (1862); *Franco-Texan Land Co. v. Laigle*, 59 Texas, 339 (1883); *People v. Hoyne*, 182 Ill. App. 42 (1913); *Camp v. Byrne*, 41 Mo. 525 (1867); *Taylor v. Branham*, 35 Fla. 297 (1895); *Duke v. Taylor*, 37 Fla. 64 (1896); *Mitchell v. Vt. Copper Mining Co.* 40 Super. Ct. 406 (1876), affirmed 67 N. Y. 280; 2 Cook on Corp. 589.

¹⁵ *Franco-Texan Land Co. v. Laigle*, 59 Tex. 339, 343 (1883).

creation and cannot migrate to another sovereignty, is so reasonable and just, and so firmly embedded in our jurisprudence that courts ought to have no hesitation in enforcing it."¹⁶

In some states, a smaller number, the opinion has been asserted, that the action of such meetings, held outside the incorporating state, is not void but voidable, and may be enjoined in a proceeding brought by a minority of the stockholders.¹⁷

Again, does this inhibition apply to all business transacted at a stockholders' meeting, or only to the business actually prescribed by statute? Thus, if a statute provides that all elections for directors and other officers shall be held by a corporation within the incorporating state, there must be a literal compliance with the requirement.¹⁸ Other business however, for example the increase of its capital stock, may be transacted at a meeting held in

¹⁶ Miller, J., *Smith v. Silver Valley Mining Co.*, 64 Md. 85, 94 (1885).

¹⁷ *Jones v. Pearl Mining Co.*, 20 Colo. 417 (1894).

¹⁸ *Handley v. Stutz*, 139 U. S. 417 (1891).

another state.¹⁹ This distinction has been drawn by the highest federal court, but has not been approved by some state tribunals.²⁰

Nevertheless, if corporate meetings are held outside the state, the action taken by them in some cases may be binding. These may be divided into two classes. Cases in which creditors are affected, and cases affecting only stockholders. Again, creditors may be affected in two ways. First, if creditors, knowing that the meeting was improperly held, nevertheless enter into relations with the corporation, they are thereby estopped or prevented from claiming that its action was invalid.²¹ Second, a corporation is estopped or prevented from claiming that its action was invalid to defeat the claim of any innocent creditor, for example, the payment of a bond issued by it, and for which it has received the money. In other words it

¹⁹ *Handley v. Stutz*, 139 U. S. 417, 422.

²⁰ Cases cited under 14.

²¹ *Wright v. Lee*, 2 S. Dak. 596 (1892); *Hasbrouck v. Rich*, 113 Mo. App. 389 (1905); *Toledo, etc., Co. v. Continental Trust Co.*, 95 Fed. 497, 507 (1899).

cannot repudiate its obligations on this ground after receiving the benefit therefrom.²² Stockholders may also be affected in two ways. Those who were present and participated in the meeting are bound by its action.²³ Absentees may object to its action and may have the corporation enjoined from putting its action into execution.²⁴ But if it has already acted and the rights of creditors have supervened, then the question might prove difficult for the court to decide which party had superior rights or equities.²⁵ Moreover the validity of a corporation's action cannot be raised incidentally or collaterally

²² *Heath v. Silverthorn Lead Mining Co.*, 39 Wis. 146 (1875); *Tuckasegee Mining Co. v. Goodhue*, 118 N. C. 981 (1896); *McKee v. Title Ins. & Trust Co.*, 159 Cal. 206 (1911).

²³ *Handley v. Stutz*, 139 U. S. 417 (1891); *Heath v. Silverthorn Lead Mining Co.*, 39 Wis. 146 (1875); *Stradley v. Cargill Elevator Co.*, 135 Mich. 367 (1904). See *Columbia Nat. Bank v. Matthews*, 85 Fed. 934 (1898).

²⁴ *Jones v. Pearl Mining Co.*, 20 Colo. 417 (1894).

²⁵ See *Jones v. Pearl Mining Co.*, 20 Colo. 417 (1894).

by a creditor or stockholder, but only directly by the state.²⁶

8. What are Corporate Acts?—The courts however differ concerning the nature of corporate acts that must be done by the corporation in a meeting of its stockholders, and other acts that are not regarded as corporate which may be done by the agents of the corporation outside the incorporating state. For the courts everywhere recognize the principle that directors may hold meetings for the transaction of the ordinary business of their corporation outside the state.²⁷

The cases in which this question has arisen may be divided into two classes. In the first class are the cases deciding what are corporate acts. The one act which all the courts regard as possessing a

²⁶ McKee Title Ins. & Trust Co., 159 Cal. 206 (1911); *Humphreys v. Mooney*, 5 Colo. 282 (1880).

²⁷ *Reichwald v. Commercial Hotel Co.*, 106 Ill. 439 (1883); *Harding v. American Glucose Co.*, 182 Ill. 551, 614 (1899); *People v. Hoyne*, 182 Ill. App. 42 (1913); *Ohio & Miss. R. Co. v. McPherson*, 35 Mo. 13 (1864).

corporate character is the holding of elections for directors.²⁸ Changing the articles of association is another corporate act,²⁹ likewise ordering the assessment of stockholders;³⁰ also adopting by-laws when this is done by them.³¹

The second class of cases include those which recognize the authority of directors of a corporation to do various things. Thus an agent may execute a deed, for this is not a corporate act; and authority may be conferred by a vote passed at a directors' meeting of the corporation held outside the incorporating state.³² More generally,

²⁸ *Handley v. Stutz*, 139 U. S. 417, 422. See also cases cited in *People v. Hoyne*, 182 Ill. App. 42 (1913). See 3 Cook on Corporations, § 700, p. 2348, 7th ed.

²⁹ *Bastian v. Modern Woodmen of America*, 166 Ill. 595 (1897); *Mitchell v. Vt. Copper Mining Co.*, 56 N. Y. 623 (1874).

³⁰ *Mitchell v. Vt. Copper Mining Co.*, 40 N. Y. Super. Ct. 406; *Ormsby v. Vt. Copper Mining Co.*, 56 N. Y. 623 (1874).

³¹ *Derry Church v. State Council of Pa.*, 3 Dauph. (Pa.) 77 (1900).

³² *Arms v. Conant*, 36 Vt. 744 (1864).

they may authorize a conveyance of real estate or of any interest therein situated outside the state that incorporated the association.³³ They may also appoint a secretary.³⁴

9. Outside Meeting for Effecting an Organization.—Lastly, even if stockholders who participate in a meeting held outside the state, after the corporation had become fully organized, are estopped or prevented from questioning its action, does this rule apply to a meeting held for the purpose of effecting an organization? It has been applied to the corporation,³⁵ and also to creditors who have dealt with the corporation as an acting concern.³⁶

10. Meetings of Corporation Incorporated in Several States.—Sometimes a corpora-

³³ *Bellows v. Todd*, 39 Iowa, 209 (1874); *Reichwald v. Commercial Hotel Co.*, 106 Ill. 439 (1883).

³⁴ *McCall v. Byram Mfg. Co.*, 6 Conn. 428 (1827).

³⁵ *Heath v. Silverthorn Lead Mining Co.*, 39 Wis. 146 (1875).

³⁶ *Hasbrouck v. Rich*, 113 Mo. App. 389 (1905); *Toledo, etc., Co. v. Continental Trust Co.*, 95 Fed. 497, 507 (1899).

tion is incorporated in several states, especially railroad corporations. Such a corporation may meet in any of the states without repeating the meeting in the others.³⁷ And a court has said of a consolidated railroad company running through five states, that it may hold its meetings for the transaction of business, election of directors, etc., in any one of the states, even if the laws of a particular state require the meetings of the corporation to be held within the state, and its acts are legal and binding upon all.³⁸

³⁷ *Graham v. Boston, Hartford & Erie R. Co.*, 118 U. S. 161 (1886).

³⁸ *Pollitz v. Wabash R. Co.*, 167 Fed. 145, 156 (1909), reversed on other grounds, 176 Fed. 333 (1910).

CHAPTER II.

Notice of Meetings.

Sect. 1. First Meeting.

11. Notice of First Meeting.—The statutes of many states usually prescribe how notice of the first meeting of a corporation shall be given. They are, however, not mandatory, but “merely directory,” and are intended to secure to all members of a corporation their right to participate in the proceedings.³⁹ Hence, if all the persons interested in a corporation should come together without any notice or call whatever and proceed to accept the charter and do other things needful to constitute the

³⁹ *Braintree Water Supply Co. v. Braintree*, 146 Mass. 482 (1888); *Newcomb v. Reed*, 94 Mass. 362 (1866); *Walworth v. Brackett*, 98 Mass. 98 (1867); *Hardenburgh v. Farmers & Mechanics' Bank of New Brunswick*, 3 N. J. Eq. 68 (1834); *Judah v. Am. Live Stock Ins. Co.*, 4 Ind. 222 (1853).

corporation, their action would be valid. Neither the public, nor any person belonging to the association, would have a right to question the proceedings.⁴⁰ Moreover if all consented to an organization which disregarded the statutory requirements concerning notice, the organization would be valid.⁴¹

As no statutory provision probably exists in any state that subsequent meetings shall be called in the same manner as the first meeting, a corporation has the right to prescribe the mode by resolution or by-law how they shall be called.⁴²

Again, if upon the organization of a corporation, a majority of the subscribers refuse to proceed in calling a meeting, the minority may call it and bind the corporation.⁴³

⁴⁰ *Newcomb v. Reed*, 94 Mass. 362, 364 (1866).

⁴¹ *Braintree Water Supply Co. v. Braintree*, 146 Mass. 482.

⁴² *Taylor v. Griswold*, 14 N. J. Law, 222 (1834).

⁴³ 2 Cook on Corporations, § 593. This rule is based on the authority of *Busey v. Hooper*, 35 Md. 15 (1871), which does not clearly establish the rule.

12. When Others not Mentioned May Call It.—A case may arise in which other persons than those designated by statute may call a meeting. Thus, if the statute prescribes that the persons named in the certificate of incorporation, or any three of them, may call a meeting of the stockholders, other persons might call it if those named in the certificate had died before the time for giving the notice.⁴⁴

In Ohio after the requisite amount of stock of a corporation has been subscribed to authorize the stockholders to elect directors, it is not an indispensable requisite to an election that the notice should be given by the persons named in the certificate of incorporation. Nor can the validity of the acts of the directors be questioned collaterally on the grounds of irregularity in giving notice.⁴⁵

13. Effect of Delay in Calling.—Authority for creating a corporation may fail through

⁴⁴ *Chamberlain v. Painesville & Hudson R. Co.*, 15 Ohio St. 225 (1864).

⁴⁵ *Chamberlain v. Painesville & Hudson R. Co.*, 15 Ohio St. 225 (1864).

exercise of it. The time for acting is often prescribed by statute. Long delay, however, if no statute interferes, does not prevent the calling of the first meeting many years after authority to create a corporation was given.⁴⁶ But there may be an unreasonable delay in organizing that would be fatal.⁴⁷

14. Failure to Mail Notice.—A failure to mail notices of the first meeting of subscribers of capital stock, as required by statute, does not defeat the corporate organization whenever all the stockholders have actual notice of the meeting and join in waiving the mailing of the notices, as the law is directory and not mandatory.⁴⁸

15. Waiver.—A subscriber waives⁴⁹ his notice of the first meeting when he afterwards offers to pay for his stock.⁵⁰

⁴⁶ *Marmora Foundry Co. v. Murney*, 1 C. P. Rep. (Canada), 29 (1850).

⁴⁷ *Planters' Ins. Co. v. Tennessee*, 161 U. S. 193, 194 (1896).

⁴⁸ *Butler Paper Co. v. Cleveland*, 220 Ill. 128 (1906).

⁴⁹ See No. 5, 25, 41.

⁵⁰ *Bryant v. Goodnow*, 22 Mass. 228 (1827).

Sect. 2. Annual Meeting.

16. What Notice Must Specify.—Whatever charter, statute or by-law requires in giving notice must be regarded;⁵¹ but if no requirements have been imposed by them, need any business be specified? Only unusual business need be,⁵² and some courts have declared that even this need not be mentioned. “Every stockholder,” says Judge Brewer, “takes notice of the fact that all business which may be transacted by the stockholders is open for consideration and action at such meeting; and their powers at such meeting are as vast and complete as the completeness of the corporation.”⁵³ Nevertheless, the better and more usual practice is to give

⁵¹ *Jones v. Concord & Montreal R.*, 67 N. H. 119, 140 (1891); *Richardson v. Vt. & Mass. R. Co.*, 44 Vt. 613, 619 (1872).

⁵² *Bagley v. Reno Oil Co.*, 201 Pa. 78 (1902); *People's Mutual Ins. Co. v. Westcott*, 80 Mass. 440 (1860).

⁵³ *Chicago, etc., R. Co. v. Union Pacific R. Co.*, 47 Fed. 15, 20 (1891); *Jones v. Concord & Montreal R.* 67 N. H. 119, 140 (1891).

notice of any unusual business that is to be presented to the meeting.

Business corporations generally set apart a particular day for the election of officers; and when a day is thus appointed, no particular notice is required.⁵⁴ Likewise if a particular day in each year is appointed for the transaction of all business, a notice of the particular business to be done is not required.⁵⁵ It is immaterial in what manner the stated meetings of the corporation have been fixed, if they are in fact regularly held on stated days.⁵⁶ Nor need the notice of a special meeting, held for the transaction of ordinary business, state the object of the meeting.⁵⁷ But notice is required when business of special im-

⁵⁴ *People v. Peck*, 11 Wend. 604 (1834); *Rex v. Hill*, 4 Barn. & Cress. 426 (1825).

⁵⁵ *Warner v. Mower*, 11 Vt. 385 (1839); *Sampson v. Bowdoinham Steam Mill Corporation*, 36 Me. 78 (1853); *People v. Batchelor*, 22 N. Y. 128 (1860).

⁵⁶ *Atlantic Mut. F. Ins. Co. v. Sanders*, 36 N. H. 252 (1858).

⁵⁷ *Savings Bank of New Haven v. Davis*, 8 Conn. 191 (1830).

portance is to be transacted on any day not expressly set apart for that particular transaction; and unless such meeting is so noticed, all its acts will be illegal and void.⁵⁸ Thus the levying of an assessment is an act of this character and cannot be done at a special corporate meeting unless the stockholders are duly notified of the purposes of the meeting.⁵⁹ Nor can the officers of a religious corporation be elected at a special meeting without proper notice.⁶⁰

17. By-Law Concerning Notice.—Corporations generally adopt by-laws stating how notice of their meetings must be given. Should a by-law provide that the annual meeting shall be called as the directors may direct, or by a notice in writing by the president delivered or mailed to each stockholder personally, the requirement is

⁵⁸ *Rex v. Liverpool*, 2 Burr. 723 (1759); *Rex v. Doncaster*, 2 Burr. 738 (1759); *Rex v. Theodorick*, 8 East, 543 (1807); *People's Mut. Ins. Co. v. Westcott*, 80 Mass. 440 (1860).

⁵⁹ *Atlantic DeLaine Co. v. Mason*, 6 R. I. 463 (1858); *Harding v. Vandewater*, 40 Cal. 77 (1870).

⁶⁰ *Smith v. Erb*, 4 Gill, 437 (1846).

mandatory in the observance of both methods. If, therefore, the directors fail to call the meeting, the president must do so.⁶¹ Likewise a by-law providing that the annual meeting "may be held on a certain day and shall be called by notice" is mandatory and not optional or permissive.⁶² Such an interpretation must be given to the law whenever the interests of justice, of the public, or of third persons is concerned.⁶³

If no notice of a meeting is required by charter or statute for the election of officers or other business, an election held at the regular time and place fixed by a by-law is valid without giving notice.⁶⁴

18. By-Law Specifying Notice of Business to be Transacted.—Again, if a by-law prescribe that the notice of a meeting "shall

⁶¹ *Pennington v. G. W. Pennington's Sons*, 170 Cal. 114 (1915).

⁶² *Stabler v. El Dora Oil Co.*, 27 Cal. App. 516 (1915).

⁶³ *Ibid.*

⁶⁴ *Matter of N. Y. Electrical Workers' Union v. Sullivan*, 122 N. Y. App. Div. 764 (1907).

specify the business to be transacted," this does not apply to a notice of the annual meeting of a corporation whose directors are annually elected. Their election therefore at such a meeting is valid even if the notice be silent on the matter.⁶⁵

19. By-Law Cannot Override a Statute.

—Of course all statutory requirements concerning notice must be observed, nor can they be superseded by any by-law. Thus if a statute requires the designation in the notice of the time and place of an annual meeting, the requirement must be heeded. A by-law therefore fixing the time, but not designating the place, would not override the statute.⁶⁶ Furthermore, should a statute or charter require that the time and place of the annual meeting be fixed by by-law, this must not only fix the place and day, but the precise hour in the day.⁶⁷

⁶⁵ *Sampson v. Bowdoinham Steam Mill Corporation*, 36 Me. 78 (1853).

⁶⁶ *United States v. McKelden*, 11 MacArthur & Mackey, 162 (1879).

⁶⁷ *San Buenaventura, etc., Co. v. Vassault*, 5 Cal. 534 (1875).

20. Omission of Annual Meeting.—If the by-laws require that an annual meeting shall be held during a named month, and it is inadvertently omitted, the meeting may be held afterwards, officers elected and other business transacted and such action would be valid.⁶⁸

21. Publication of Notice.—Should a charter or statute require that notice of an annual meeting be published, for example in two newspapers in a given place at least two weeks before the meeting, the law is mandatory and must be observed. And if it is not observed, the action of the meeting is void.⁶⁹

22. Usage in Personal Notice.—At common law all notices were required to be personal unless otherwise ordered by by-law, and notice by mail or publication was ineffective.⁷⁰ Generally, the mode of giving

⁶⁸ *Scanlan v. Snow*, 2 App. Cases (D. C.), 137 (1894). See No. 82.

⁶⁹ *United States v. McKelden*, 11 MacArthur & Mackey, 162 (1879). See *Tuttle v. Michigan Air Line R. Co.*, 35 Mich. 247 (1877).

⁷⁰ *Tuttle v. Michigan Air Line R. Co.*, 35 Mich. 247 (1877).

notice is prescribed by charter, statute, or by-law. If no provision of the kind exists, then there must be personal notice to each member or stockholder. Nor will any usage, for example of notification by the clerk or secretary without a by-law or direction of a committee or directors defeat this rule, especially whenever the business to be transacted is of great importance. While corporations may act by majorities, "yet before such majority can be authorized to act, all the members should be notified."⁷¹

23. Who May Give Notice. Directors.—Generally the directors have authority to give notice of all general as well as special meetings of the stockholders;⁷² and whether they are directors *de facto* or *de jure*,⁷³ and especially when no others are designated

⁷¹ *Wiggin v. Freewill Baptist Church*, 49 Mass. 301 (1844); *Stow v. Wyse*, 7 Conn. 214 (1828).

⁷² *Sherwood v. Wallin*, 154 Cal. 735 (1908); *Toronto Brewing & Malting Co. v. Blake*, 2 Ont. Rep. (Canada), 175 (1882).

⁷³ *Sherwood Case*, 154 Cal. 735.

to give notice.⁷⁴ But a general agent of a corporation, whenever no statute or by-law provides for calling meetings, may call them.⁷⁵

24. Who are not Entitled to Notice.—

By the English law members of an English corporation residing outside the jurisdiction of the English law are not entitled to notice.⁷⁶

25. Waiver of Notice.—The presence of a stockholder at the annual meeting for the election of directors is not a waiver of the failure to give notice of the time and place of it as required by law, if he takes no part in the proceedings except to protest against holding the election; nor is he thereby estopped from questioning afterward the validity of the election.⁷⁷

26. Mandamus to Call Meeting.—A man-

⁷⁴ *Cassell v. Lexington Turnpike Road Co.*, 9 S. W. Rep. 502 (Ky. 1888).

⁷⁵ *Stebbins v. Merritt*, 64 Mass. 27 (1852).

⁷⁶ *In re Union Hill Silver Co.*, 22 L. T. Rep. 400 (1870).

⁷⁷ *People v. Matthiessen*, 193 Ill. App. 328 (1915). See No. 5, 41.

damus will be issued⁷⁸ at the instance of stockholders to compel an unwilling board of directors to call an annual meeting for the purpose of electing a board of directors.⁷⁹ This rule may also be applied to a board of directors of a foreign corporation, if all reside in the state and all the property is situated therein. But a court will not issue a writ of mandate to compel the doing of an act where, for any reason, it cannot enforce its order.⁸⁰

Sect. 3. Of Regular Meetings Other than Annual Ones.

27. Statutes and By-Laws Must be Observed.—Besides annual meetings, corporations hold many stated or regular meetings at monthly or other times. The statutory

⁷⁸ See No. 29, 279.

⁷⁹ *Stabler v. El Dora Oil Co.*, 27 Cal. App. 516; *State v. Wright*, 10 Nev. 167 (1875); *People v. Blackhurst*, 11 N. Y. Supp. 675 (1890); *People v. Hart*, 11 N. Y. Supp. 673 (1890); *Anderson v. Eltonhead*, 26 Pa. Weekly Notes, 95 (1890).

⁸⁰ *Ibid.*

and corporate requirements prescribing who may call these meetings must be observed.⁸¹ Thus if a meeting of proprietors must be called by twelve of them, a call signed by eleven would not suffice.⁸² If a statute requires a committee of a society to sign the call, it cannot be signed by the clerk, nor by him for them.⁸³ If the trustees of a corporation must issue the call, this cannot be done by the president.⁸⁴ If directors can issue the call, it will not suffice if signed by the individual names of a majority without stating that it was given by order of the board, or stating that the persons whose names were signed were directors.⁸⁵ If authority to issue the call is vested exclusively in the directors, of course it cannot be exercised by the president and secretary.⁸⁶ If the articles of association

⁸¹ *Stockholders of Shelby R. Co. v. Louisville, etc., R. Co.*, 75 Ky. 62 (1876).

⁸² *Evans v. Osgood*, 18 Me. 213 (1841).

⁸³ *Cong. Society of Bethany v. Sperry*, 10 Conn. 200 (1834).

⁸⁴ *State of Nevada v. Pettineli*, 10 Nev. 141 (1875).

⁸⁵ *Johnston v. Jones*, 23 N. J. Eq. 216 (1872).

⁸⁶ *Dusenbery v. Looker*, 110 Mich. 58 (1896).

provide that meetings of stockholders may be called by the board of directors, or by any three stockholders, the president and cashier cannot issue a valid notice.⁸⁷ But if a board consists of three members, and there is a vacancy, the other two may issue a lawful notice.⁸⁸

28. When Notice Need Not be Given.—

If a statute, charter, by-law or usage fixes the time and place at which regular meetings of a company shall be held, this is in itself sufficient notice to stockholders and no further notice is required.⁸⁹ But if a by-law does not fix the hour of the day, notice of it must be given.⁹⁰

29. If not Given What May be Done.—

⁸⁷ *Matthews v. Columbia Nat. Bank*, 79 Fed. 558 (1897).

⁸⁸ *Toronto Brewing & Malting Co. v. Blake*, 2 Ont. Rep. (Canada), 175 (1882).

⁸⁹ *Hill v. Atlantic & N. C. R. Co.*, 143 N. C. 539, 552 (1906).

⁹⁰ *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371 (1893); *Warner v. Mower*, 11 Vt. 385, 393 (1839); *State v. Bonnell*, 35 Ohio St. 10, 15 (1878); *Jones v. Hilldale Cemetery Society*, 65 S. W. Rep. 838 (Ky. 1901).

Should the proper persons refuse to call a meeting, they may be compelled to do so, as we have seen,⁹¹ by a proceeding called a mandamus.⁹² In compelling a foreign corporation to hold meetings, how far may the courts go? Clearly a mandamus should not be granted on the request of a foreign stock corporation to compel the secretary of another foreign corporation to call a meeting of its stockholders for the purpose of changing the articles of its association,⁹³ for the law is well established that courts will not exercise visitorial

⁹¹ See No. 26, 279.

⁹² *People v. Cummings*, 72 N. Y. 433 (1878); *People v. Board of Governors of Albany Hospital*, 61 Barb. 397 (1871); *McNeely v. Woodruff*, 13 N. J. Law 352, (1833); *Bassett v. Atwater*, 65 Conn. 355 (1895); *State of Nevada v. Wright*, 10 Nev. 167 (1875); *O'Hara v. Williamstown Cemetery Co.*, 133 Ky. 828 (1909); *Orr v. Bracken County*, 81 Ky. 593 (1884); *State v. Groat*, 109 Minn. 168 (1909); *Sheppard v. Rockingham Power Co.*, 150 N. C. 776 (1909); *Potomac Oil Co. v. Dye*, 14 Cal. App. 674 (1910); *People v. Town of Fairbury*, 51 Ill. 149 (1869).

⁹³ *State v. Groat*, 109 Minn. 168 (1909).

powers over foreign corporations or interfere with the management of their internal affairs.⁹⁴

30. Notice after Abandonment of Corporation.—After a corporation has voluntarily abandoned its organization for a long period, fifteen years or longer, its stockholders representing a majority of the stock, have no right without giving notice to meet on the day which would have been election day if the organization still existed, and proceed to reorganize it. The abandonment is an implied agreement that the organization shall remain suspended indefinitely.⁹⁵

31. Particulars Required in Notice.—Notice of the time of holding a meeting and other particulars must be given in the mode prescribed by charter, statute

⁹⁴ Guilford *v.* Western Union Tel. Co., 59 Minn. 332 (1894); State *v.* Unida Gold Mining Co., 32 Ohio Cir. 60 (1910); Madden *v.* Penn Electric Light Co., 181 Pa. 61 (1897); North State, etc., Co. *v.* Field, 64 Md. 151 (1885).

⁹⁵ Morrill *v.* Little Falls Mfg. Co., 60 Minn. 405, 409 (1895).

or by-law,⁹⁶ and if these are silent, then in accordance with the common law and usage of the company.⁹⁷ If the law requires notice of a specified number of days before the meeting is held, fourteen for example, the day of meeting must be excluded.⁹⁸ If, however, an insufficient number of days' notice is given, but every share is represented and votes, no stockholder can afterward complain of the illegality of the meeting.⁹⁹

If a regular time is fixed in the charter or by-laws for holding meetings, every member is presumed to have notice of

⁹⁶ *Stockholders of Shelby R. Co. v. Louisville, etc., Co.*, 75 Ky. 62 (1876); *Reilly v. Oglebay*, 25 W. Va. 36 (1884); *Matter of Long Island R. Co.*, 19 Wend. 37 (1837).

⁹⁷ *In re Railway Sleepers Supply Co.*, 1 Ch. Div. 204 (1885); *Queen v. Aberdoro Coal Co.*, 14 Q. B. 854 (1850); *Queen v. Justices of Shropshire*, 8 Ad. & Ellis, 173 (1838); *Norton v. Salisbury Town Clerk*, 4 C. B. 32 (1846).

⁹⁸ *Matter of Long Island R. Co.*, 19 Wend. 37 (1837).

⁹⁹ *Matter of Griffing Iron Co.*, 63 N. J. Law, 168 (1898), affirmed 63 N. J. Law, 357 (1899).

them, though it is a common practice to give notice notwithstanding these provisions.¹⁰⁰

If a by-law requires notices to be mailed a designated time before the meeting, the omission is not material.¹⁰¹ If a by-law requires the notice to contain the general nature of the business to be transacted at a meeting, there must be a substantial compliance with the requirement.¹⁰²

The place where the meeting is to be held should be specified, unless this is fixed in the by-laws or charter.¹⁰³

32. Notice Should Show Authority to Give It.—The notice of a meeting ought to show that it was given by a person having authority to give it.¹⁰⁴ But the

¹⁰⁰ *People v. Batchelor*, 22 N. Y. 128 (1860); *Atlantic Ins. Co. v. Sanders*, 36 N. H. 252 (1858).

¹⁰¹ *Clark v. Wild*, 85 Vt. 212 (1911).

¹⁰² *Normandy v. Ind, Coope & Co.*, 1 Ch. Div. 84 (1908).

¹⁰³ *Jones v. Milton Turnpike Co.*, 7 Ind. 747 (1856). See No. 6.

¹⁰⁴ *Johnston v. Jones*, 23 N. J. Eq. 216 (1872); *Stevens v. Eden Meeting House*, 12 Vt. 688 (1839); *Congregational Society of Bethany v. Sperry*, 10 Conn. 200 (1834).

want of authority in the person calling the meeting may be waived by the presence and consent of all who had a right to vote at such meeting.¹⁰ On one occasion the court said: "It is objected that notice of the meeting for the election of directors was not proved; but the objection is, in this case, unimportant, as, from the evidence, it appears that the subscribers here sued were present by their proxy and voted at the election."¹⁰⁶

33. Personal Notice.—"When there is no different provision in the charter or by-laws of a corporation, such meetings must be called by giving personal notice to each member of the board of trustees."¹⁰⁷ But if

¹⁰⁵ *Judah v. The American L. S. Ins. Co.*, 4 Ind. 333 (1853); *Jones v. Milton Turnpike Co.*, 7 Ind. 547 (1856).

¹⁰⁶ *Jones Case*, 7 Ind. 547.

¹⁰⁷ *Harding v. Vandewater*, 40 Cal. 77 (1870); *People v. Batchelor*, 22 N. Y. 128 (1860); *People's Mutual Ins. Co. v. Westcott*, 80 Mass. 440 (1860); *Wiggin v. Freewill Baptist Church*, 49 Mass. 301 (1844); *Rex v. Doncaster*, 2 Burr. 738 (1759); *Rex v. Liverpool*, 2 Burr. 723 (1759); *Rex v. Theodorick*, 8 East, 543 (1807); *Evans v. Osgood*, 18

a written or printed notice is required by charter or statute, a verbal notice will not bind those who did not appear.¹⁰⁸

34. Presumption that Notice was Given.

—"It is always presumed that notice is given, and that any meeting of which a minute is found in the proceedings of the stockholders of a corporation, was regularly and lawfully held."¹⁰⁹ Again, whenever there has been an actual meeting of the stockholders of a corporation, and a majority of them was present in person, it will be presumed, unless there be evidence to the contrary, that the meeting was regularly called and that all the stockholders were properly notified.¹¹⁰ The burden of proof therefore in any legal proceeding is on him

Me. 213; *Stevens v. Eden Meeting House*, 12 Vt. 688; *Congregational Society of Bethany v. Sperry*, 10 Conn. 200; *Savings Bank v. Davis*, 8 Conn. 191.

¹⁰⁸ *Westcott v. Minnesota Mining Co.*, 23 Mich. 145 (1871).

¹⁰⁹ *Avery, J., Benbow v. Cook*, 115 N. C. 324, 330 (1894).

¹¹⁰ *Bridges v. Southern Bell Tel. Co.*, 15 Ga. App. 291 (1914); *Sargent v. Webster*, 54 Mass. 497 (1847); *Beardsley v. Johnson*, 121 N. Y. 224 (1890).

who denies the want, or sufficiency of notice.¹¹¹

35. Record of Notice.—If the record of the meeting does not show that notice was given, this may be shown by proper evidence.¹¹²

36. All Must be Notified.—All the stockholders must be notified, for the reason that authority exists in all of them. No authority therefore can be rightfully exercised, if any are absent, unless all have had reasonable notice, and opportunity to be present.¹¹³ Nevertheless the question not infrequently arises, to whom shall the notice be given. A stockholder is not entitled to notice of a stockholders' meeting, especially if the stock stands in the name of another who is notified and appears at the meeting.¹¹⁴ Nor is the pledgor of

¹¹¹ 2 Cook on Corporations, § 600 (7th Ed.), citing many cases.

¹¹² Foote v. Greilick, 166 Mich. 636 (1911).

¹¹³ Reilly v. Oglebay, 25 W. Va. 36 (1884); People v. Batchelor, 22 N. Y. 128 (1860).

¹¹⁴ Wright v. Tacoma Gas, etc., Co., 53 Wash. 262 (1909).

stock entitled to notice unless the stock stands in his name.¹¹⁵

37. Foreign Stockholder.—If a notice of the meeting of the stockholders of an English corporation is so short as not to reach American stockholders in time for the meeting, yet fulfils the English law, the meeting is legal.¹¹⁶

38. Effect of Not Receiving Notice. Absence.—A stockholder does not waive his right to be notified by absence¹¹⁷ from home.¹¹⁸ On the other hand, "it would be unreasonable to say that a meeting was made invalid by a failure to give him notice thereof," when there is no fault on the part of those who send the notice. By remaining where he cannot or will not attend meetings, he waives notice

¹¹⁵ *McDaniels v. Flower Brook Mfg. Co.*, 22 Vt. 274 (1850); *Cleveland City R. Co. v. First Nat. Bank of New York*, 68 Ohio St. 582 (1903).

¹¹⁶ *Republican Mt. Silver Mines v. Brown*, 58 Fed. 644 (1893), reversing 55 Fed. 7.

¹¹⁷ See No. 57, 123, 124, 140.

¹¹⁸ *Jackson v. Inhabitants of Hampden*, 20 Me. 37 (1841).

of them, indeed he puts himself beyond the power of the proper officer to notify him.¹¹⁹

What then is the legal effect of a stockholder's absence? Is his rights in any way changed? In other words, has he sacrificed his rights by non-attendance? Two things at least must be considered; the sustaining of the action of meetings that have been properly notified and conducted, and the preservation of the rights of their members. No action by the meeting, or by any number of the members ought to impair the right of other members to redress in all cases in which they have observed the law. Thus if a director is guilty of wrong doing, the rights of a stockholder to proceed against him ought not to be jeopardized by any juggling that may have been performed by the meeting to which opposing stockholders have not in any way assented. In such cases absence from meeting may have been essential to the preservation of their rights.¹²⁰

¹¹⁹ Porter *v.* Robinson, 30 Hun 209 (1883).

¹²⁰ See No. 123, 124, 140, 141.

39. Inability of Stockholder to Act on Notice.—A meeting of a corporation may be legally held though one of its members was incapable from mental and physical imbecility of receiving notice. If this was legal, then the corporation was duly summoned. Says Justice Bigelow: "The law cannot look into the capacity of the stockholders to transact business, but can only regard the capacity of the aggregate body when duly assembled. If it were otherwise, the legal capacity of a stockholder, such as marriage, infancy, or insanity, would operate as an effectual obstacle to a valid assembly of any aggregate corporation."¹²¹

40. Death of Stockholder.—Various questions have arisen concerning the effect of the death of a stockholder on the representation of his stock. If notice is not given to the owner or representative, is the meeting legal? In many cases the answer depends on a statute. Thus under a national bankruptcy law, it required a

¹²¹ Stebbins v. Merritt, 64 Mass. 27, 33 (1852).

petition by a corporation for voluntary bankruptcy to be voted by a majority of the corporators at a legal meeting. A corporator died leaving no will, and before administration was granted on the estate, the corporation was adjudged a bankrupt. This part of the stock was regarded as having no corporator and therefore no notice to the owner was necessary to render the meeting valid which took the action above mentioned.¹²²

Again, after the death of a stockholder, the owner of his stock, if it has been sold, should have it transferred, or give distinct notice to the company that subsequent notices of meetings be sent to his address as directed. If this is not done, he cannot charge the corporation with neglect should it continue to send notices to the former address.¹²³

By the English law notice must be sent only to registered members. If, therefore,

¹²² *Freeman's Nat. Bank v. Smith*, 13 Blatch. 220; 9 Fed. Cases, 760 (1875).

¹²³ *Dana v. American Tobacco Co.*, 72 N. J. Eq. 44 (1907), affirmed 69 At. Rep. 223.

a member dies, his representative is not entitled to notice unless he has become a member by formal registration.¹²⁴

41. Waiver of Notice.—Statutory and other requirements concerning the notice of meetings of the members of a corporation are for their benefit and may be waived¹²⁵ by their presence and acquiescence.¹²⁶ What, then, is an effective waiver? If each stockholder attends in person or by proxy,¹²⁷ and participates in the action of the meeting, he is estopped from denying its legality for want of notice.¹²⁸ But if a single person having

¹²⁴ *Allen v. Gold Reefs of West Africa*, 1 Ch. Div. 656 (1900), reversing 2 Ch. Div. 40 (1899).

¹²⁵ See No. 5, 25.

¹²⁶ *Lutheran T. Congregation v. St. Paul's, etc.*, Cong. of Neenah, 159 Wis. 56 (1914); *Ga. Granite Co. v. Miller*, 144 Ga. 665 (1916).

¹²⁷ *In Matter of Mathiason Mfg. Co.*, 122 Mo. App. 437 (1907).

¹²⁸ *Stebbins v. Merritt*, 64 Mass. 27 (1852); *Richardson v. Vt. & Mass. R. Co.*, 44 Vt. 613 (1872); *Decatur Building Investment Co. v. Neal*, 97 Ala. 717 (1893); *Chamberlin v. Painesville, etc., R. Co.*, 15 Ohio St. 225 (1864); *Kenton Furnace, etc., Co.*

the right to vote is absent from lack of notice, the meeting is illegal and void.¹²⁹ Again, a stockholder may impliedly as well as expressly waive his right to have notice served on him.¹³⁰

A stockholders' meeting held under a waiver of notice is legal.¹³¹ Likewise a constitutional provision requiring notice to be given of a meeting for increasing the bonds of a corporation, which is for the benefit of stockholders, may be waived by them, or its omission may be ratified by them. Nor can others complain when the stockholders themselves have acquiesced in disregarding the prescribed formalities.¹³²

v. McAlpin, 5 Fed. 737 (1880); *Tompkins v. Sperry*, 96 Md. 569 (1903); *In Matter of Mathiason Mfg. Co.*, 122 Mo. App. 437 (1907); *Synott v. Cumberland Building and Loan Association*, 117 Fed. 379, 385 (1902); *Central Trust Co. v. Condon*, 67 Fed. 84 (1895).

¹²⁹ *Rex v. Theodorick*, 8 East 543 (1807); *Rex v. Gaborian*, 11 East 77, 86 (1809).

¹³⁰ *In re Hammond*, 139 Fed. 898, 900 (1905).

¹³¹ *Gray v. Bloomington & Normal R.*, 120 Ill. App. 159, 188 (1905).

¹³² *Nelson v. Hubbard*, 96 Ala. 238, 252 (1892).

A subscriber to the stock of a corporation who, as an officer, participates in the calling of the meeting for its permanent organization, at which he is chosen a director and serves in that capacity, waives his right to avoid payment on the ground of the inefficiency of the notice of the meeting.¹³³ Again, such a subscriber who is present at the first election, is elected, and serves as a director, cannot in a suit against him by the corporation object to its validity on the ground that no notice of the election was given.¹³⁴

42. Ratification of Notice.—An improper

citing *Beecher v. Marquette Rolling Mill Co.*, 45 Mich. 103 (1881); *Manhattan Hardware Co. v. Phalen*, 128 Pa. 110 (1889); *Wood v. Corry Water Works Co.*, 44 Fed. 146 (1890); *Thomas v. Citizens' Horse R. Co.*, 104 Ill. 462 (1882); *Appeal of Columbia Nat. Bank*, 16 Pa. Weekly Notes, 357 (1885); *Kenton Furnace Co. v. McAlpin*, 5 Fed. 737 (1880); *In Matter of British Sugar Ref. Co.*, 3 Kay & J. Ch. Rep. 408 (1857).

¹³³ *Bucksport and Bangor R. Co. v. Buck*, 68 Me 81 (1878).

¹³⁴ *Schenectady & Saratoga Plank R. Co. v. Thatcher*, 11 N. Y. 102 (1854).

notice may sometimes be remedied by ratification.¹³⁵ Thus if a secretary calls a meeting instead of the directors, and his action is properly ratified by them, the call is effective.¹³⁶ "The action of a meeting will be declared valid where it appears that every stockholder who did not participate in the meeting ratified its action afterwards."¹³⁷

Even though notice of the time and place of an election of trustees of a corporation is necessary, and the notice is given, which was misleading, nevertheless the election is valid if a majority of those who were entitled to participate in the election were actual participators.¹³⁸

Again, an election of trustees of a church may be valid, even though the notice lacked the proper length of time and names

¹³⁵ See No. 111.

¹³⁶ *Hooper v. Kerr, Stuart & Co.*, 83 Law Times Rep. (N. S.) 729 (1900).

¹³⁷ *Avery, J., Benbow v. Cook*, 115 N. C. 324, 330 (1894).

¹³⁸ *Jones v. Hilldale Cemetery Society*, 65 S. W. Rep. 838 (Ky. 1901).

of the trustees whose seats became vacant at the election, if the election was fairly conducted and all who had the right to vote were present.¹³⁹

A stockholder who knows of the sale of a railroad in which he is interested and approves of it, though not legally notified of the meeting authorizing its sale and was not present, is bound thereby.¹⁴⁰ But a stockholder who, after receiving notice to attend a meeting called by the directors to consider their neglect of duty, decides not to go, is not thereby prevented from taking action against them by the stockholders who may attend and ratify the unauthorized acts of the directors.¹⁴¹

Likewise the stockholders of a corporation, to which money has been advanced for its use and benefit with the knowledge and approval of all the stockholders and officers, by such action dispense with formal notice

¹³⁹ *People v. Peck*, 11 Wend. 604 (1834).

¹⁴⁰ *Young v. Toledo & South Haven R. Co.*, 76 Mich. 485 (1889).

¹⁴¹ *McFadden v. Leeka*, 48 Ohio St. 513 (1891).

of a meeting and the corporation is bound for the money.¹⁴²

43. Stockholders Cannot Complain of Lack of Notice to Another.—A stockholder who was personally present, or by his authorized representative holding his proxy, cannot complain that notice was not given to others.¹⁴³ The objection is personal. Thus one stockholder or subscriber for stock cannot avail himself of the neglect of the corporation to notify other subscribers of the first meeting, especially if their presence was not necessary to make up the requisite representation of half the stock required by law.¹⁴⁴

¹⁴² *Burke v. Sidra Bay Co.*, 116 Wis. 137 (1902); *J. K. Siphon Ventilator Co. v. Hutton*, 175 S. W. 30 (Ark. 1915); *Ashley Wire Co. v. Ill. Steel Co.*, 164 Ill. 149 (1896); *Lowe v. Los Angeles Suburban Gas Co.*, 24 Cal. App. 367 (1914); *Thompson v. Williams*, 76 Cal. 153 (1888); *San Buenaventura Mfg. Co. v. Vassault*, 50 Cal. 534 (1875).

¹⁴³ *Foote v. Greilick*, 166 Mich. 636 (1911); *Stutz v. Handley*, 139 U. S. 417 (1891); *Schenectady & Saratoga Plank R. Co. v. Thatcher*, 11 N. Y. 102 (1854).

¹⁴⁴ *Nickum v. Burckhardt*, 30 Or. 465 (1897).

44. Notice to Creditors.—Sometimes the legal requirement concerning notice may be important to creditors. Thus, if a resolution is passed to dissolve a corporation without giving the proper length of notice of the meeting at which such action was taken, creditors are not thereby prevented from attaching the property of the corporation.¹⁴⁵ A creditor cannot attack a corporate act on the ground that notice of a stockholders' meeting authorizing a reduction of stock was not given to all the stockholders, the only one not receiving notice having subsequently assented to the reduction.¹⁴⁶

If a mortgage is authorized at a meeting at which all the stockholders were not notified, but the majority were and who attended the meeting, subsequent lien creditors cannot attack the validity of the mortgage whenever the corporation has received the money. By such action

¹⁴⁵ *Cleveland City Forge Iron Co. v. Taylor Bros. Iron Works*, 54 Fed. 82, 85 (1893).

¹⁴⁶ *Vrooman v. Vansant Lumber Co.*, 215 Pa. 25 (1906).

the corporation has become bound.¹⁴⁷ But a creditor cannot object that proper notice was not given of a stockholders' meeting which authorized an assignment for the benefit of creditors in which every director and stockholder acquiesced.¹⁴⁸

45. Time for Objecting to Notice.—

If a stockholder wishes to object to the notice, he must do so within a reasonable time, a delay of six months would be fatal.¹⁴⁹ And one who is present and participates in a meeting cannot afterward object that it was not properly called.¹⁵⁰

¹⁴⁷ *Drewery v. Columbia Amusement Co.*, 87 S. C. 445 (1910).

¹⁴⁸ *State Nat. Bank v. Merchants' Bank*, 83 Miss. 610 (1903); *Beecher v. Marquette Rolling Mill Co.*, 45 Mich. 103 (1881).

¹⁴⁹ *Southern Counties Dep. Bank v. Boaler*, 73 Law Times (N. S.), 374 (1895).

¹⁵⁰ *Weinburgh v. Union St. R. Co.*, 55 N. J. Eq. 640 (1897); *Germer v. Triple State, etc., Co.*, 60 W. Va. 143 (1906); *Handley v. Stutz*, 139 U. S. 417 (1891).

Sect. 4. Special Meetings.

46. Difference between Notice of a Regular and Special Meeting.—There is a difference between the notice of a special and regular or annual meeting. In the former case the notice must state clearly the nature of the business to be transacted, and none other can be legally done.¹⁵¹ The authority of a corporation to act at a regular or annual meeting is broader. Whether the notice of a special meeting was specific enough is a question that has frequently been answered by legal tribunals. Thus, if the notice states some specific business, “as well as the general business” of the corporation, there cannot, under the latter clause, be transacted other

¹⁵¹ *Jones v. Concord & Montreal R. Co.*, 67 N. H. 119, 140 (1891); *United Gold & Platinum Mines Co. v. Smith*, 44 N. Y. Misc. 567 (1904); *Tuttle v. Michigan Air Line R. Co.*, 35 Mich. 247 (1877); *Stockholders of Shelby R. Co. v. Louisville, etc., Co.*, 75 Ky. 62 (1876); *In re Bridport Old Brewery Co.*, L. R. 2 Ch. App. Cases, 101 (1866); *In re Silkstone Fall Colliery Co.*, 1 Ch. Div. 38 (1875).

business of an unusual nature.¹⁵² Another example may be given. A meeting of the members of a mutual fire insurance company was called "for the purpose of making such alterations in the by-laws of said company as may be deemed necessary, and for the transaction of such other business as may come before them." They could not, after voting to increase the number of directors, which was not limited by the by-laws, elect the additional ones. The notice for altering the by-law did not embrace the election of a larger number of directors.¹⁵³ Likewise an assessment of stock cannot be made at a special meeting without specifying the object of it in the notice.¹⁵⁴ In another case the notice was "to transact such business as may be properly brought before the meeting." At the meeting directors were elected.

¹⁵² *United Gold & Platinum Mines Co. v. Smith*, 44 N. Y. Misc. 567 (1904).

¹⁵³ *Peoples' Mutual Ins. Co. v. Westcott*, 80 Mass. 440 (1860).

¹⁵⁴ *Atlantic DeLaine Co. v. Mason*, 5 R. I. 463, 471 (1858).

Their election was declared to be void because this was not done "at the annual meeting of stockholders, nor at a special meeting called for the purpose on notice to the stockholders, nor with their unanimous consent."¹⁵⁵

47. Who May Call Special Meeting.—

If the mode of calling a special meeting is provided by a by-law, does this exclude every other mode? Thus, the by-laws of an insurance company provided that a special meeting should be called by the president, or in his absence by the secretary on application made to them in writing by ten members. This did preclude the directors from calling special meetings without such an application.¹⁵⁶

48. Nature of Notice.—"The notice which specifies the business or the objects of the meeting is to be a fair notice, intelligible to the minds of ordinary men. The court does not scrutinize these notices with a

¹⁵⁵ *Dunster v. Bernards Land and Sand Co.*, 74 N. J. Law, 132 (1906).

¹⁵⁶ *Citizens' Mutual Fire Ins. Co. v. Sortwell*, 90 Mass. 217 (1864).

view to excessive criticism to find out defects, but to look at them fairly. I think the question may be put in this form. What is the meaning which this would carry to the ordinary minds of mankind?"¹⁵⁷

49. Notice May be Too Specific.—On the other hand the notice may be more specific than the law requires. Instead of specifying the general nature of the special business, the notice may indicate with particularity the mode in which the special business is to be submitted to the meeting. Should this be done, the notice, so a court has declared, cannot impose any greater restrictions upon the meeting than would have been imposed by a notice in more general terms.¹⁵⁸

50. Mode of Notifying.—The mode of

¹⁵⁷ Chitty, J., *Henderson v. Bank of Australasia*, 62 L. T. Rep. 869, 871 (1890), reversed on another point in 45 Ch. Div. 330; *Tiessen v. Henderson*, 1 Ch. Div. 861 (1899); *South School District v. Blakeslee*, 13 Conn. 227 (1839).

¹⁵⁸ *Betts & Co. v. MacNaghten*, 1 Ch. Div. 430 (1910).

notifying stockholders prescribed by statute or by-law must be heeded. Thus, if the statute requires the notice to be printed in a newspaper circulating in the district where the corporation has its principal office, and it is printed in a newspaper not circulating there, the notice is invalid.¹⁵⁹ Again, if the notice must be in writing and posted up in a specified manner, no other mode of notifying the meeting will answer the legal requirements.¹⁶⁰

51. Time of Notice.—Corporations usually have power to make specific provision for holding special meetings; if they do not avail themselves of it and leave the matter to the discretion of one or more of their principal officers, stockholders have no right to complain of the insufficiency of the notice given, whenever it appears that there was sufficient time for the parties to be present had they so decided.¹⁶¹

¹⁵⁹ *Swansea Dock Co. v. Levien*, 20 L. J. (Exch.) 447 (1851).

¹⁶⁰ *Stevens v. Eden Meeting-House Society*, 12 Vt. 688 (1839).

¹⁶¹ *Covert v. Rogers*, 38 Mich. 363, 367 (1878).

52. Departure from Notice in Acting.—

To what extent may the meeting depart from the notice in its action and yet act legally? Must the compliance with the notice be literal? Undoubtedly any substantial variation would be fatal; so would be a notice that was intended to deceive the stockholders concerning the real purpose of the meeting.¹⁶² But if a notice relates to a change in the compensation of directors, specifying the amount, and a different amount is fixed at the meeting, such action is valid.¹⁶³

53. Conditional Notice.—A conditional notice that a meeting will be held is not a good notice. "You must tell," says Judge Chitty, "the shareholders or members of the company who are entitled to have

¹⁶² In *Kaye v. Croydon Tramways Co.*, 1 Ch. Div. 358 (1898), the notice did not specify the purpose for which the meeting was called, as required by the statute, but was "most artfully framed to mislead the shareholders." See *Tiessen v. Henderson*, 1 Ch. Div. 861 (1899).

¹⁶³ *Torbock v. Lord Westbury*, 2 Ch. Div. 871 (1902).

the notice that the meeting will be held—not that the meeting will be held in a certain event.”¹⁶⁴

54. Business Covered by Notice is Legal.

—If a special meeting is called on proper notice and other business is transacted not covered by the notice, the business not thus covered is not valid, while the business covered by the notice on which the meeting acted is legal.¹⁶⁵

55. Waiver of Notice.—The charter, statute or by-law must be alike regarded in giving notice of a special meeting. But “if, notwithstanding that the meeting has not been properly called, all the members appear and participate in its proceedings without objection, this will be a waiver by each member of any objection to the notice. But if a single member having a right to be present and vote is absent, or refuses his assent to the acts done at

¹⁶⁴ *Alexander v. Simpson*, 43 Ch. Div. 139, 141 (1889).

¹⁶⁵ *Matter of British Sugar Ref. Co.*, 3 Kaye & Johns, 408, 413 (1857); *In re Irrigation Co. of France*, 6 Ch. Div. 176 (1871).

the meeting, its proceedings will be illegal and void."¹⁶⁶

56. Ratification.—There may be a ratification, however, of the business done at a special meeting not covered by the notice. This may happen when all the members are present and consent thereto.¹⁶⁷

57. Absentees.—While stockholders are bound to take notice of regular and notified meetings and adjournments, they are not bound to take notice of a special meeting called by a vote of a regular meeting at which they were not present.¹⁶⁸

58. Expense of Special Notice.—A question may arise concerning the expense of publishing notices of special meetings. If they are properly authorized, of course it is proper to charge the expense against the company. For example, if the directors have authority to propose a scheme for consolidating their corporation with an-

¹⁶⁶ Thompson, J., *Kuhl v. Meyer*, 42 Mo. App. 474, 478 (—).

¹⁶⁷ *Rex v. Theodorick*, 8 East 543 (1807).

¹⁶⁸ *People v. Batchelor*, 22 N. Y. 128 (1860).
See No. 123, 124, 140, 141.

other, the expense of giving notice of the meetings is within their discretion, and a proper charge against the corporation.¹⁶⁹ But if notices are improperly sent out, as sometimes happens when a faction is trying to obtain control, the expense cannot be charged to the corporation.¹⁷⁰

The expense of printing and sending out notices, proxies, and a statement of a contract for the control of a company cannot be collected from it, even though they were printed and sent by a majority of the board of directors. In a case calling for the application of this principle the court remarked "that proper and honest corporate management was subserved by widespread notice to stockholders affecting the welfare of the corporation, and there is no impropriety in charging the latter with any expenses within reasonable limits which were incurred in giving sufficient

¹⁶⁹ *Rascover v. American Linseed Co.*, 135 Fed. 341 (1905).

¹⁷⁰ *Lawyers' Ad. Co. v. Consolidated, etc., Co.*, 187 N. Y. 395 (1907), modifying 110 App. Div. 892.

notice of a special meeting at which the stockholders would be called upon to decide these questions."¹⁷¹

¹⁷¹ *Lawyers' Ad. Co. v. Consolidated R., etc., Co.*, 187 N. Y. 395 (1907).

CHAPTER III.

Inspectors for Holding Meetings.**Sect. 1. Appointment and Qualifications of Inspectors.**

59. Ministerial or Judicial Duties?—Are the duties of an inspector ministerial, or judicial, or both? In some cases they have been regarded as acting in both capacities.¹⁷² Thus they act judicially in determining whether a vote is receivable, and ministerially in receiving and rejecting it.¹⁷³ In Pennsylvania and New Jersey their office is regarded as ministerial rather than judicial.¹⁷⁴ Perhaps the truth lies between

¹⁷² *Matter of Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838); *Matter of Williams*, 57 N. Y. Misc. 327 (1908).

¹⁷³ *Ibid.*

¹⁷⁴ *Commonwealth v. Woelper*, 3 S. & R. 29; *Bache v. Central Leather Co.*, 78 N. J. Eq. 484 (1911). See also *In Matter of Cecil*, 36 How Pr.

the two extremes, an inspector being a judicial officer to the extent that his decision is valid until set aside by some competent tribunal.¹⁷⁵ The important question is, does an appeal lie from his decision, and if so, to the meeting, or to the courts? The meeting may decide subject to an ultimate revision of the courts.¹⁷⁶ In some states appeals are regulated by statutes.

In Oregon, by statute, the president of the corporation acts as inspector of elec-

477 (1869). In a dissenting opinion in *Commonwealth v. Woepler*, 3 S. & R. 29, 43 (1817), Justice Gibson said: "I consider the judge of an election as a judicial and not as a ministerial officer. It is his business to decide on the qualifications of every one that presents himself as a voter, and though the law defines those qualifications, he is still to determine whether the party has brought himself within its provisions."

¹⁷⁵ *Umatilla Water Users' Association v. Irvin*, 56 Or. 414 (1910).

¹⁷⁶ *Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838); *Commonwealth v. Woelper*, 3 S. & R. 29 (1817); *Umatilla Water Users' Association v. Irvin*, 56 Or. 414 (1910); *Hartt v. Harvey*, 32 Barb. 55 (1860); *State v. Cronan*, 23 Nev. 432, 454 (1897); *State v. Chute*, 34 Minn. 135, 137 (1885).

tions and certifies who are elected directors. For that purpose he is a public officer and has the same authority in receiving and rejecting votes as a judge or inspector of a general election. Should he exercise his powers erroneously, an appeal lies, not to the meeting at large, but to the courts.¹⁷⁷ If no statute or charter defines his powers, then an appeal lies from his decision to the meeting at large.¹⁷⁸

In New York and Ohio, also, inspectors are judges of the qualifications of voters, and their action in thus deciding is regarded as judicial.¹⁷⁹ They may, therefore, when two persons contest the right to vote the same stock, determine which of them shall exercise the right;¹⁸⁰ nor can his decision be reversed by the meeting, but only by a court.¹⁸¹ In New York the

¹⁷⁷ *Umatilla Water Users' Association v. Irvin*, 56 Or. 414 (1910).

¹⁷⁸ *Ibid.*

¹⁷⁹ *Hartt v. Harvey*, 32 Barb. 55 (1860).

¹⁸⁰ *In re Excelsior Fire Ins. Co.*, 16 Abb. Pr. 8 (1862); *In Matter of Lighthall Mfg. Co.*, 47 Hun 258 (1888); *State v. Merchant*, 37 Ohio St. 251 (1881).

¹⁸¹ 2 Cook on Corporations, § 605.

rector of a church presiding over the meeting of a religious corporation for the election of church wardens, in receiving the ballots of those who appear to vote, makes a judicial determination that the voters possess the necessary qualifications. He cannot, therefore, at a later day revise his decision and change the result of the election. "The right to make such decision having been exercised, the votes received and cast, the power of such presiding officer to decide again, at a later day does not exist."¹⁸²

60. Who May Serve.—Unless excluded by charter, statute, or by-law, some of the officers of a corporation may be selected or chosen to serve as inspectors at elections.¹⁸³ An inspector or scrutineer however ought not to be a candidate for a director or other position which might impair his ability to act impartially. When interest and duty conflict they should

¹⁸² *Matter of Williams*, 57 N. Y. Misc. 327 (1908).

¹⁸³ In *Matter of Chenango Co. Mutual Ins. Co.*, 19 Wend. 635 (1839).

not serve, and if they do, and decide unfairly, the election of directors or other officers, if resting on their action, will be set aside.¹⁸⁴ And this seems the better opinion. Nevertheless it has been held that an inspector may be a candidate for a director.¹⁸⁵

61. Qualifications.—Inspectors are not always fully qualified to perform their duties, and when they are not, questions arise concerning the effect of their action. Thus, if inspectors should not be sworn before undertaking their duties, forgetting or neglecting to do so, an election cannot be set aside on this ground, if no objection was interposed to their serving at the time of the election. The reason is, this requirement is only directory, not mandatory.¹⁸⁶ When they are duly appointed and begin

¹⁸⁴ *Dickson v. McMurray*, 28 Grant's Ch. Rep. 533 (Canada, 1881).

¹⁸⁵ *Ex parte Willcocks*, 7 Cow. 402 (1827); *Commonwealth v. Woelper*, 3 S. & R. 29 (1817).

¹⁸⁶ In *Matter of Election of Directors of Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838); *Union Nat. Bank v. Scott*, 53 N. Y. App. Div. 65 (1900).

the discharge of their duties, they are inspectors *de facto*.¹⁸⁷

A court also may restrain the election of directors at a meeting called by commissioners acting under a statute by enjoining them from acting as inspectors of the election.¹⁸⁸

62. Emergency Inspectors.—If an emergency arises whereby the ordinary forms of procedure prescribed by the charter and statutes regulating elections suddenly fail to accomplish their purpose, the corporators may exercise the power and provide for the appointment of inspectors of elections.¹⁸⁹ Likewise when inspectors are restrained by law from acting at a meeting, the stockholders may, at the time appointed for the meeting, proceed to choose other persons to act as inspectors.¹⁹⁰

¹⁸⁷ In Matter of Election of Directors of Mohawk & Hudson R. Co., 19 Wend. 135 (1838); Union National Bank *v.* Scott, 53 N. Y. App. Div. 65 (1900).

¹⁸⁸ Walker *v.* Devereaux, 4 Paige, 229, 247 (1833).

¹⁸⁹ Matter of Wheeler, 2 Abb. Pr. (N. S.) 361 (1866).

¹⁹⁰ People *v.* Albany & Susquehanna R. Co.,

63. Mode of Action when None are Appointed.—If none are appointed, or provided by charter or statute, the meeting must determine the qualifications of those who desire to vote. The president of the corporation, or chairman of the meeting, possesses no such authority. Should he attempt to exercise it, his decision would have no more binding force than would a similar opinion expressed by any other stockholder. If he should therefore actually do so and express an adverse opinion against a stockholder, he should not refrain from offering his vote. Should he yield however and not present his claim of right to vote to the meeting for its judgment, he would have no standing elsewhere to complain of the wrong he had sustained.¹⁹¹ And if the law requires that an election be conducted by inspectors, it cannot be conducted by only one.¹⁹²

55 Barb. 344 (1869); *Matter of Wheeler*, 2 Abb. (N. S.) 361 (1866).

¹⁹¹ *State v. Chute*, 34 Minn. 135 (1885); *State v. Cronin*, 23 Nev. 432, 437 (1897).

¹⁹² In *Matter of Lighthall Mfg. Co.*, 47 Hun 258 (1888).

Sect. 2. Duties of Inspectors.

64. Opening and Closing of Polls.—

The duties of inspectors are often, in part at least, regulated by by-laws.¹⁹³ Thus a by-law may provide that at the regular annual election the judges of election appointed by the board of directors shall “judge of the qualifications of all voters and the sufficiency of all proxies offered, and their decision shall be final and conclusive in all cases.” Nevertheless, their decision is not conclusive, whenever they have practised fraud.¹⁹⁴

Sometimes a by-law provides that the secretary, treasurer, auditor or other officers of a corporation shall constitute a committee on elections, and that it shall be their duty to make all arrangements therefor, with full power to determine all questions touching the qualification of voters, validity of proxies and the acceptance and rejection of votes. When this is done they, and not the board of directors, possess the sole

¹⁹³ See No. 80.

¹⁹⁴ *Triesler v. Wilson*, 89 Md. 169 (1899).

right to determine how long the polls shall be kept open to enable stockholders to vote their stock. Their action in keeping them open is discretionary, and unless they abuse it, will not be disturbed by any court.¹⁹⁵

65. Discretionary Power in Keeping Polls Open.—Although it is not lawful to open the poll at an election of directors before the time fixed in the notice, it is not improper for the inspectors to keep it open as long, within a reasonable discretion, as may be needful to receive the votes of all the stockholders present ready and offering to vote.¹⁹⁶ And if the resolution by which inspectors derive their authority limits the time for voting to one hour, yet they may exercise a reasonable discretion in keeping the poll open for a longer period.¹⁹⁷ Nor will the votes of

¹⁹⁵ *Clopton v. Chandler*, 27 Cal. App. 595 (1915).

¹⁹⁶ *People v. Albany & Susquehanna R. Co.*, 55 Barb. 344 (1869); *Matter of Long Island R. Co.*, 19 Wend. 37 (1837).

¹⁹⁷ In *Matter of Election of Directors of Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838).

duly qualified voters who are allowed, by keeping the polls open, to vote after the time fixed for closing them has expired, vitiate the election of corporate officers.¹⁹⁸

Nor is the discretion for a committee on elections, created by by-law as a substitute for inspectors, abused by keeping the polls open for the election of directors from ten o'clock of a fixed day to twelve o'clock of the next day pursuant to an announcement made hours before the time when the polls were closed, notwithstanding the notice of election recited that the polls would close at six o'clock on the first day; and also that by so doing enough votes were cumulated to secure the election of a director, a thing that would not have happened had the polls been closed at the published hour.¹⁹⁹

66. Adjournment of Meeting for Polling.

—When no time is limited within which

¹⁹⁸ *Rudolph v. Southern Beneficial League*, 23 Abb. N. C. 199 (1899); *People v. Albany & Susquehanna R. Co.*, 55 Barb. 344 (1869); *Matter of Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838).

¹⁹⁹ *Clopton v. Chandler*, 27 Cal. App. 595 (1915).

the poll of an election must be held, it may be adjourned from day to day in the discretion of the inspectors.²⁰⁰

67. Re-opening of Polls.—After a ballot has been counted and announced, the polls cannot afterward be opened to secure the votes of others who have not voted.²⁰¹

68. Inspection of Record of Voters.—Inspectors cannot look beyond the transfer book of the company to determine who can vote at an election of directors.²⁰² Thus, at a meeting for the election of directors a stockholder was not on the list of stockholders given to the inspectors. All the stock ever issued to the company had either been transferred or returned, and the certificates were repasted to their stubs on the stock book. No transfer

²⁰⁰ *In Matter of Chenarigo Co. Mutual Ins. Co.*, 19 Wend. 635 (1839).

²⁰¹ *Forsyth v. Brown*, 2 Pa. Dist. 765 (1893).

²⁰² *Matter of Long Island R. Co.*, 19 Wend. 37 (1837); *Haskell v. Read*, 68 Neb. 107 (1903); *Brewster v. Hartley*, 37 Cal. 15 (1869); *State v. Smith*, 15 Or. 98 (1887); *Vowell v. Thompson*, 3 Cranch C. C. 428 (1829).

book had been kept. It was held that the inspectors should not have recognized the company as a stockholder, and the challenge of the company's right to vote should have been sustained.²⁰³

69. Cannot Decide on Genuineness of Proxy.—Inspectors have no power to determine the genuineness of proxies offered for the purpose of voting on them. If these have been apparently given by stockholders and are regular on their face, inspectors cannot question them.²⁰⁴ Nor have inspectors the power to require a stockholder who is voting in person or by proxy to make an affidavit that his stock has not been pledged;²⁰⁵ or that the written proxy was not acknowledged or proved. "If the proxy is regular in form, and apparently the act of the stockholder, the inspectors should receive the vote."²⁰⁶

²⁰³ *In re* Del. River & Atlantic R. Co., 76 N. J. Law, 163 (1908).

²⁰⁴ *Matter of* Long Island R. Co., 19 Wend. 37 (1837).

²⁰⁵ *In Matter of* Cecil, 36 How. Pr. 477 (1869).

²⁰⁶ *Ibid.*; *Matter of* Election of St. Lawrence Steamboat Co., 44 N. J. Law, 529, 535 (1882).

70. Use of Substitute Stock Book.—If a new stock book is made in place of the old one because it has been lost or cannot be obtained, inspectors of election may properly refer to it, but if the old book is produced, that must be used and govern concerning all transfers that were made before the new book was opened.²⁰⁷

71. What Votes They Must Accept.—If a vote is not challenged, it must be received. If it is challenged, the inspector must decide whether it can be received.²⁰⁸ After receiving the vote and depositing it in the box, he cannot afterward disregard the vote on the ground that it was illegal.²⁰⁹

72. Remedy for Improper Rejection of Votes.—When votes are adjudged to have been erroneously rejected by inspectors at an election of directors which, if received,

²⁰⁷ Schoharie Valley R. Case, 12 Abb. Pr. (N. S.) 394 (1872).

²⁰⁸ In Matter of Chenango Co. Mutual Ins. Co., 19 Wend. 635 (1839); *Hart v. Harvey*, 32 Barb. 55 (1860).

²⁰⁹ *Ibid.*

would have elected a certain ticket, the only remedy is to set aside the election. A court has no power to declare the ticket successful for which the votes would have been cast had they been received.²¹⁰

73. Difference in Power Between Court and Inspector.—While a court may go behind a stock register to find out who is the owner of stock, inspectors cannot do this.²¹¹

74. Cannot Decide on Eligibility of Electors.—While inspectors are required to decide on the admissibility of votes offered at an election, they have no power to decide on the eligibility of the persons for whom votes are or should be cast. This is a matter for the legal tribunals.²¹²

75. Inspectors May Influence Voters.—What can inspectors do, if anything, in the way of soliciting votes for candidates? In California it has been declared that it is

²¹⁰ Matter of Long Island R. Co., 19 Wend. 37 (1837).

²¹¹ Strong v. Smith, 15 Hun 222 (1878).

²¹² Matter of Election of St. Lawrence Steamboat Co., 44 N. J. Law, 529 (1882).

not illegal for them to exercise their persuasive powers over stockholders to obtain votes for a contesting director, even though their zeal spring from the desire to retain their positions which would be secured by his election. Said the court: "It is not the motive which prompts the act, but the legality of the act itself with which the law is concerned."²¹³ The soundness of this ruling may be questioned. All the authorities admit they must act impartially, but if permitted to be zealous supporters or opponents of contesting candidates, are they likely to act in an impartial manner? The courts of California have led all other courts in departures from the rules of parliamentary law, but this departure, so far as we can learn, has not been followed by the courts of any other state.

76. Certificate of Inspector.—Their certificate is not essential to enable the party

²¹³ *Clopton v. Chandler*, 27 Cal. App. 595, 601 (1915); *Boyson v. Thorn*, 98 Cal. 578, 21 L. R. A. 233; *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357 (1894).

elected to take his office. If inspectors neglect or refuse to give it, the party entitled to it will be declared elected to the office.²¹⁴ When the certificate is confined to a bare declaration that the person to whom it is given has been elected, it is *prima facie* evidence of his right to the office; but when it recites the facts on which the inspector relies for his justification and authority for declaring the person to whom it is given elected, and these facts clearly show the contrary, the certificate destroys itself.²¹⁵

As the votes cast at an election, and not the certificate of the inspectors, is the decisive act, if the president of the meeting does not announce the result, or does not announce it correctly, the members can take proper action to ascertain the result. On one occasion a court said: "The members had a right to ascertain for their own benefit whether the result of the vote, as declared

²¹⁴ In Matter of Chenango Co. Mutual Ins. Co., 19 Wend. 635 (1839).

²¹⁵ Hartt v. Harvey, 32 Barb. 55 (1860).

by the president was correct or not, and if their action in the premises was entirely unofficial, I cannot see how it affects the case. The chairman could not by any erroneous ruling as canvasser of votes, defeat any of the candidates. The will of the voter could not be thwarted in that way."²¹⁶

77. When Inspectors are Justified in Not Acting.—When is an inspector of elections justified in not acting? Whenever, in discharging his duties, there is violent interference with him, and he is prevented from issuing a proper certificate of election; or he has reason to fear violence if he continues to discharge his duties.²¹⁷

²¹⁶ *State v. Smith*, 15 Or. 98, 115 (1887).

²¹⁷ *Umatilla Water Users' Association v. Irvin*, 56 Or. 414 (1910). :

CHAPTER IV.

Mode of Holding Meetings.**Sect. 1. Mode of Procedure.**

78. Mode of Proceeding when no Particular Mode has been Adopted.—Whenever no particular mode of proceeding has been prescribed or adopted, if the wishes of the stockholders have been fairly expressed, and the election, if one has been held, has been conducted in good faith, it will not be set aside for any informality in the mode of conducting it.²¹⁸

79. Stockholders Must Act Together.—They must, however, assemble in their representative capacity. They cannot discharge any duty unless thus assembled and organized into a deliberative meeting, even though all may individually have

²¹⁸ *Philips v. Wickham*, 1 Paige, 590 (1890). See No. 199.

given their separate consent to any proposed action.²¹⁹ Voting elsewhere than at a meeting, or separate consents, either oral or written, is void, for they can act only together and at the place properly designated in the notice of the meeting.²²⁰ Where joint action is required by law, individual action is of no avail.²²¹ As the Supreme Court of North Carolina remarks: "It is essential to the validity of their acts that they should be assembled in their representative capacity, as they are not permitted to discharge any of their duties unless thus organized into a deliberative meeting, though they may all have severally and individually given their assent to any

²¹⁹ *Hill v. Atlantic & N. C. R. Co.*, 143 N. C. 539 (1906).

²²⁰ *Commonwealth v. Cullen*, 13 Pa. 133, 143 (1850); *Duke v. Markham*, 105 N. C. 131 (1890); *Nicholstone City Co. v. Smalley*, 21 Tex. Civ. App. 210 (1879); *Torrey v. Baker*, 83 Mass. 120 (1861); *Livingston v. Lynch*, 4 Johns. Ch. 573, 597 (1820); *Clarke v. Omaha & Southwestern R. Co.*, 5 Neb. 314 (1877).

²²¹ *Finley Shoe & Leather Co. v. Kurtz*, 34 Mich. 89, 91 (1876).

proposed corporate action."²²² But action by stockholders to which all agree may be valid.²²³

A different rule however applies to the acts of directors. These may be approved individually by stockholders.

80. Opening and Closing of Meeting.—

A meeting should be opened within a reasonable time after the hour specified in the notice.²²⁴ What is a reasonable time depends in some measure on the circumstances of each particular case. A delay of an hour is not, of itself, an unreasonable delay, if no law is thereby infringed requiring the meeting to be opened sooner.²²⁵ Furthermore, if there has been an unreasonable delay, this must be proved. The leaving of a few persons

²²² *Hill v. Atlantic & N. C. R. Co.*, 143 N. C. 539, 552 (1906).

²²³ *Strickland v. Jolly*, 136 Ga. 885 (1911); *Coe v. East & W. R. of Ala.*, 52 Fed. 531, 534 (1882); *Breslin v. Fries-Breslin Co.*, 70 N. J. Law, 274 (1904).

²²⁴ See No. 64.

²²⁵ *South School District v. Blakeslee*, 13 Conn. 227, 235 (1839).

is no proof, for they may have gone away for the very purpose of preventing the meeting from acting.²²⁶

And if the meeting cannot complete its work on the day fixed, it may continue until its work is finished.²²⁷

81. Remedy for Irregular Assembling.—

An election at a meeting irregularly assembled may be valid if all the stockholders attend and act or assent but the mere physical presence of all of them at the time and place is not sufficient.²²⁸ Nor is the knowledge by them of the time and place of holding the annual meeting for the election of directors a waiver of the notice required by law unless all the stockholders attended and assented to the holding of the election.²²⁹

²²⁶ *South School District v. Blakeslee*, 13 Conn. 277, 235 (1839).

²²⁷ *State v. Vanosdal*, 131 Ind. 388 (1891). See *Sackett v. State*, 74 Ind. 486 (1881).

²²⁸ *People v. Matthiessen*, 193 Ill. App. 328 (1915); *J. W. Butler Paper Co. v. Cleveland*, 220 Ill. 128 (1906).

²²⁹ *People v. Matthiessen*, 193 Ill. App. 328 (1915).

82. Effect of Failure to Hold Annual Meeting.—Suppose a meeting is not held as required by charter or statute,²³⁰ or has been held and the courts have declared it was illegal? Most, perhaps all, the states have enacted statutes providing for such contingencies. Usually these provide for calling another meeting and within a specified period.²³¹

Again, when stockholders have failed to hold their annual meeting and elect directors, a meeting of the old board on the day the stockholders should have acted, at which they resolved to hold over until their successors are elected, is not in effect their re-election by the directors.²³²

83. How Validity of Meeting is Determined.—The legality of a meeting can be determined only in a proceeding brought directly for this purpose. Like so many other rules this is not an invariable one. Accordingly, their legality has been decided

²³⁰ See No. 20.

²³¹ See *People v. Cummings*, 72 N. Y. 433 (1878).

²³² *Sylvania & Girard R. Co. v. Hoge*, 129 Ga. 734 (1907).

on some occasions in collateral and incidental ways.²³³

84. When Offering a Resolution May be Prevented.—There may be occasions for preventing, if possible, directors from offering a resolution to a meeting, when manifest harm would thereby be done. Thus, if directors convene a meeting to pass a resolution concerning their interests which are opposed to those of the stockholders, and send out a misleading circular with the intention of deceiving them, and leading them to send their proxies to the directors, a court will restrain them from laying the resolution before the meeting for its action.²³⁴

Sect. 2. Selection and Duties of Chairman.

85. Selection of Chairman.—If no statute or by-law provides who may preside at a stockholders' annual meeting, they may

²³³ See *Nathan v. Tompkins*, 82 Ala. 437 (1886); *Johnston v. Jones*, 23 N. J. Eq. 216 (1872).

²³⁴ *Jackson v. Munster Bank*, 13 L. R. Irish, 118 (1884).

select a chairman by a *viva voce* vote.²³⁵ Nor is a stock vote needed to give validity to their action; and if it is demanded after the organization has been effected, the demand comes too late.²³⁶

By charter, statute or by-law the person who shall preside at a stockholders' meeting is often designated.²³⁷ If these are silent, a non-stockholder may be legally elected moderator.²³⁸

A corporation may also provide by by-law that each stockholder may cast one vote for each share of stock in electing a chairman as in electing directors or in other matters. And if the chairman has always been selected without objection by a count by the head, this practice will not affect his election by the proper method of voting when the question is raised for the first time.²³⁹

²³⁵ *Commonwealth v. Vandegrift*, 232 Pa. 53 (1911).

²³⁶ *Ibid.*

²³⁷ *Stebbins v. Merritt*, 64 Mass. 27, 34 (1852).

²³⁸ *Ibid.*

²³⁹ *Proctor Coal Co. v. Finley*, 98 Ky. 405 (1895).

86. Mode of Nominating and Electing Him.—The person first nominating a chairman is entitled to declare who is elected to the office without regard to the question whether he is elected by a majority of the stockholders or shares voting.²⁴⁰ If there be opposing parties who do not acquiesce in the result declared, but leave and organize another meeting, instead of offering to vote, they waive all objections to the first election.²⁴¹

87. Chairman's Duty.—"The duty of a moderator is merely to preside and see that the proceedings are conducted in a legal and orderly manner. In doing this, he acts only as the agent of the corporation. There is nothing in the nature of the office which requires him to be a stockholder, although from convenience the usage is to elect one of the stockholders to perform the duty. But his duties, like that of a clerk, are merely ministerial, and can in

²⁴⁰ In Matter of Election of the Pioneer Paper Co.,
36 How. Pr. 105 (1864).

²⁴¹ *Ibid.*

no way affect the validity of the doings of the corporation or the rights of those claiming under them."²⁴²

Besides preserving order, and conducting proceedings regularly, it is the chairman's duty to ascertain the sense of the meeting on any question that is presented. He has no power to stop or adjourn a meeting at his own will;²⁴³ and if he attempt to do so, the meeting may resolve to go on with the business for which it has been convened, and appoint another chairman.²⁴⁴ In like manner, if the chairman attempts to adjourn a meeting without the consent of the stockholders and refuses to preside, or to permit the meeting to be continued in the office of the company, the stockholders may adjourn without him to another room and therein hold their meeting.²⁴⁵

88. He Cannot Direct Manner of Voting

²⁴² Bigelow, J., *Stebbins v. Merritt*, 64 Mass. 27, 34 (1852).

²⁴³ See No. 126.

²⁴⁴ *National Dwelling Society v. Sykes*, 3 Ch. Div. 159 (1894).

²⁴⁵ *State v. Cronan*, 23 Nev. 437 (1897).

nor Change Rule of Attendance.—The chairman cannot direct the manner of voting, which is fixed by charter or statute, or by-law. If it is not, the chairman cannot alter the common law method, which is personal voting.²⁴⁶ Nor can he alter the rule, whatever it may be, regulating the personal attendance of the voter, or of the person appointed to be his proxy.²⁴⁷

89. He Cannot Override Action of Electors.—If a statute requires a majority of the votes cast to elect a person to office, and the majority are not cast for a person, he is not elected, whatever the chairman may declare. Thus a person received forty-six out of ninety-seven ballots cast. The chairman, however, declared him elected, and one of the voters having objected to the ruling, the meeting sustained the chair. Nevertheless, this was not a valid election. Said the court in reviewing the action of the meeting: "The declaration

²⁴⁶ *McMillan v. LeRoi Mining Co.*, 1 Ch. Div. 331 (1905).

²⁴⁷ *McMillan v. LeRoi Mining Co.*, 1 Ch. Div. 331 (1905).

of the chairman of the meeting, pronouncing him elected, was of no avail in the face of the figures, which showed the contrary. Neither the assent of the meeting, nor any *viva voce* of the meeting, confirming the chairman's decision, made the election valid. The law required a vote of the majority given by ballot. Such majority was not so obtained.²⁴⁸

In another case the wrongful ruling of the presiding officer in declaring the true action of the meeting did not affect what was actually done. Thus, at a stockholders' meeting for the election of directors several persons received the requisite number of votes; the presiding officer, however, insisted on counting other votes as they ought not to have been counted, and announced the result of the election to be other than it really was, issued certificates of election to those not entitled to them, and declared the meeting adjourned, though a majority voted against adjournment. This high-handed action in no way pre-

²⁴⁸ State v. Fagan, 42 Conn. 32, 34 (1875).

vented those who had been rightfully elected from securing their offices.²⁴⁹

90. Appeals from the Chair.—Appeals from the rulings of the chair are frequent in meetings. Instead of doing this, when it is the proper action to take, something different is sometimes done. Thus a stockholder having attempted to organize a stockholders' meeting by sun time instead of standard time, imposed as a condition of postponement to the proper hour, that he should retain the floor, to which all parties assented. When that hour arrived he was, therefore, lawfully in possession of the floor, and had the right to make and receive nominations before the meeting. On his refusal to put to a vote a motion for the election of a chairman, the person making the motion should, if deeming himself unfairly treated, have appealed to the house from the obnoxious ruling. He had no right to put the motion himself.²⁵⁰

If a motion is made at a meeting to take

²⁴⁹ *State v. Smith*, 15 Or. 98 (1887).

²⁵⁰ *Proctor Coal Co. v. Finley*, 98 Ky. 405 (1895).

action which in law is beyond the power of that body, the removal of a director for example, and the president for that reason declines to put the motion, his refusal to entertain an appeal from his ruling is not just ground for removing him and substituting another presiding officer.²⁵¹ In the case declaring this rule the court remarked that "the rulings of the president were not upon mere questions of parliamentary law, of procedure. They went to the matter of legal power. The meeting could not by a mere motion remove a director. Nor could it elect directors otherwise than by the method of cumulative voting. We can not regard the failure of the president to entertain an appeal on these matters as justifying the re-election of another presiding officer."²⁵²

The chairman must, however, take care that the sense of the meeting is properly ascertained, and he cannot stop the meeting

²⁵¹ Alliance Co-operative Ins. Co. v. Gasche, 93 Kan. 147 (1914).

²⁵² *Ibid.*, p. 151.

at his own will and pleasure; if he purports to do so, the meeting may elect another chairman, and finish the business for which it was convened.²⁵³

Again, should the chairman refuse to entertain an amendment, the party proposing it need not object to the ruling or leave the meeting; even though the proposer then votes against the main question he does not waive his right to object to the resolution as passed. Although the chairman declares a resolution duly carried, yet the court may review his decision. Whenever a chairman refuses to poll the vote and declare the meeting adjourned, the court will not necessarily interfere. If any fraud, surprise or deceit has been practised in conducting the meeting a different rule applies.²⁵⁴

91. When Stockholder May Put Motion.

—Should the chairman refuse to put to vote a motion which is properly before the meeting for its action, the motion may be

²⁵³ Lindley on the Law of Companies, p. 427 (6th ed.), 1902.

²⁵⁴ 2 Cook on Corporations, § 606.

legally put by a temporary chairman selected at once by the meeting.²⁵⁵

92. Substitution of Chairman.—When the president of a corporation requests an individual to call to order a meeting of the stockholders for electing directors, and to act for him in his absence, the request is sufficient authority for the substitute to act unless charter, statute or by-law otherwise prescribes.²⁵⁶ By thus calling another to preside over a meeting, the legal presiding officer does not forfeit or lose his right to return to the chair and resume his authority.²⁵⁷

Sometimes the constitution of a private corporation provides that in the absence of the president, one of the vice-presidents, in the order of their number, shall preside over the meetings. In such a case the president, on vacating the chair because

²⁵⁵ *Hicks v. Long Branch Commission*, 69 N. J. Law, 300 (1903).

²⁵⁶ *People v. Albany & Susquehanna R. Co.*, 55 Barb. 344 (1869).

²⁵⁷ *De Zavala v. Daughters of Rep. of Texas*, 58 Tex. Civ. App. 19 (1909).

of illness, has no authority to call a member of the corporation, who is not a vice-president, to preside over the meeting; especially if one of the vice-presidents is present.²⁵⁸

93. Casting Vote.—A by-law providing that the president shall preside at all meetings of the stockholders and shall have a casting vote²⁵⁹ at them, does not give him the right, after he has voted on his own stock at the election of officers, to cast an additional vote and thus determine the election.²⁶⁰

94. Validation of His Acts.—Acquiescence by stockholders in the acts of the chairman of a meeting validates his acts.²⁶¹

Sect. 3. Majority Rule.

95. Majority Have Right to Rule.—The majority have the right to rule. Says Chief Justice Bigelow: "Every person who

²⁵⁸ *De Zavala v. Daughters of Rep. of Texas*, 58 Tex. Civ. App. 19 (1909).

²⁵⁹ See No. 104.

²⁶⁰ *Lamb v. McIntire*, 183 Mass. 367 (1903).

²⁶¹ *In re Argus Printing Co.*, 1 N. Dak. 434, 449 (1891).

becomes a member of a corporation aggregate by purchasing and holding shares agrees by necessary implication that he will be bound by all acts and proceedings within the scope of the powers and authority conferred by the charter, which shall be adopted or sanctioned by a vote of the majority of the corporation, duly taken and ascertained according to law."²⁶²

The assent of the majority is the assent of all "and this is not only constructively but actually true; for that the will of the majority shall, in all cases, be taken for the will of the whole, is an implied, but essential stipulation in every compact of the sort, so that the individual who becomes a member assents beforehand to all measures that shall be sanctioned by a majority of voices."²⁶³

Nevertheless, the will of the majority has its limitations. Says Justice Woodward: "It is indeed a general rule of

²⁶² *Durfee v. Old Colony & Fall River R. Co.*, 87 Mass. 230, 242 (1862).

²⁶³ *Gibson, J., Case of St. Mary's Church*, 7 S. & R. 517, 543 (1822).

elections that mere irregularities which do not tend to affect results are not to defeat the will of the majority. The will of the majority is to be respected where irregularly expressed. But where law has prescribed the time and place of election, and designated the officers who are to conduct it, a majority may not set up other officers and hold a separate election, for majorities as well as minorities are bound by law.”²⁶⁴

96. Who Constitute a Majority.—If a meeting is composed of an indefinite number of persons like stockholders, a majority of those present can act, but if the meeting be composed of a definite number like a board of directors, there must be present a majority of the whole number in order to act ²⁶⁵

Again, it has been declared that when a meeting is legally constituted, the acts of the majority of those present, are the

²⁶⁴ *Juker v. Commonwealth*, 20 Pa. 484, 493 (1853).

²⁶⁵ *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371, 377 (1893).

acts of the meeting, though such majority is less than the majority of the total number of shares.²⁶⁶

97. Statutory Majority Must be Observed.—An amendment to a certificate of incorporation may be made by a majority unless the statute requires a unanimous vote.²⁶⁷ Likewise in some states railroads may be consolidated by a majority vote of the stockholders;²⁶⁸ likewise the sale of the corporate property.²⁶⁹ Of course in all these cases if a statute prescribes a different rule this must be observed.

²⁶⁶ *Commonwealth v. Vandegrift*, 232 Pa. 53 (1911).

²⁶⁷ *In re Sharood Shoe Corporation*, 192 Fed. 945 (1912); *Wright v. Minn. Life Ins. Co.*, 193 U. S. 657, 663 (1904); *Mower v. Staples*, 32 Minn. 284 (1884); *Mercantile Statement Co. v. Kneal*, 51 Minn. 263, 265 (1892)

²⁶⁸ *Dady v. Ga. & Ala. R. Co.*, 112 Fed. 838 (1900); *Alexander v. Atlanta, etc., R. Co.*, 108 Ga. 151 (1899).

²⁶⁹ *Louisville & Nashville R. Co. v. Jarvis*, 87 S. W. Rep. 759 (Ky. 1905).

Sect. 4. Right of Discussion.

98. Right of Discussion.—A reasonable amount of discussion must be permitted at a meeting. The majority, though determined to vote in a particular way on any question, cannot refrain from hearing any arguments to the contrary.²⁷⁰ Says Vice-Chancellor Parker: "Upon every principle governing not only bodies of this kind, but governing private partnerships where there is a body of persons in which the majority is to bind the minority, it is essential to the validity of all their acts, that the voice of the minority should have an opportunity of stating their views; and it is not till they have had that opportunity that the acts of the majority become binding on the minority."²⁷¹ And Lord Eldon held that if there existed a combination among the majority, before that voice was heard to overbear it, he would consider the acts of such a body illegal."²⁷² When

²⁷⁰ *Commonwealth v. Cullen*, 13 Pa. 133 (1850).

²⁷¹ *Great Western Railway v. Rushout*, 5 DeGex & Sm., 290, 310 (1852).

²⁷² *Const v. Harris*, T. & R. 527.

the views of the minority have been heard, the chairman, with the sanction of the vote of the meeting, may declare the discussion closed, and put the question to a vote.²⁷³

99. What a Stockholder May Say.—“A stockholder at [a stockholders'] meeting, speaking to stockholders, may with impunity say things derogatory to an officer or the manager of the company, provided that what he says be pertinent to the matter in hand and he speaks in good faith and without malice. His justification rests upon the fact that he is speaking to the stockholders upon a subject in which they have an interest.”²⁷⁴

Sect. 5. Voting Tellers.

100. Action Must be by Vote.—The proper way to ascertain the wishes of the majority is by a vote. A statement or proposal made by some member with

²⁷³ *Wall v. London & Northern Assets Corporation*, 2 Ch. Div. 469 (1898).

²⁷⁴ *Hammond, J., Kimball v. Post Pub. Co.*, 199 Mass. 248, 251 (1908).

nothing said in favor or opposition thereto, is not equivalent to a motion and vote. "Silence in such a body under such circumstances does not give consent."²⁷⁵

101. Mode of Voting.—The mode of voting is fixed by charter or statute. Unless these describe a different method, personal voting must be employed, as the use of polling papers is unknown to the common law.²⁷⁶

102. Show of Hands.—In voting by a show of hands there may be great difficulty if proxies are allowed to vote. This appears from the observations of an English judge²⁷⁷ made in a case before him. "Having called for the show of hands, and having seen and counted them, the chairman is

²⁷⁵ *Sanders v. Frank St. Meth. Episcopal Church*, 114 N. Y. 626 (1889). See *Cammeyer v. United German Lutheran Churches*, 2 Sandf. Ch. 186, 208 (1844); *Constant v. Rector of St. Alban's Church*, 4 Daly, 305 (1872).

²⁷⁶ *McMillan v. LeRoi Mining Co.*, 1 Ch. Div. 331 (1905).

²⁷⁷ *Chitty, J., Ernest v. Loma Gold Mines*, 2 Ch. Div. 572, 578 (1896).

told, I will assume, that there are proxies. Therefore he must call for another show of hands of the proxies (because it is by show of hands that this voting is to take place); having done that he would not, even then, have got to the end of the necessary proceedings, because one man may hold one proxy and another man may hold ten proxies, and he must call, therefore, for the hands of the members who hold one proxy, then for those who hold two, and so forth until he has exhausted the whole. But that is not a show of hands. No one ever dreamed of that being the course to be pursued on a show of hands. He must do more. He must call for the proxies. Then he must identify the member of the company who says he holds the proxy—who holds up his hand again on his call for votes by proxy, and he must examine the proxies then and there, and keep the meeting waiting. Then he must institute a scrutiny.”²⁷⁸

²⁷⁸ *In re* Caloric Engine, etc., Co., 52 L. T. (N. S.) 846 followed; *In re* Bidwell Brothers, 1 Ch. Div. 603 (1893) disapproved.

103. Call for Division.—If a stockholder doubts that a resolution has been carried by a show of hands, he may call for a division. But suppose a statute or by-law should provide that the chairman's declaration of a vote be regarded as conclusive evidence, what then? Such a declaration would not prevail if it were fraudulent, and a court would grant proper redress.²⁷⁹

104. What is the Casting Vote.—In some corporations the presiding officer may have the casting vote.²⁸⁰ What is meant by this phrase? Its meaning may depend, and often does, on the statute conferring authority on such official. On one occasion the court declared that the term as used in the law meant that the chairman after having first voted with the rest, upon a tie occurring, could vote a second time.²⁸¹ It may be questioned

²⁷⁹ See *Young v. South African, etc., Syndicate*, 2 Ch. Div. 268 (1896).

²⁸⁰ See No. 93.

²⁸¹ *People v. Rector, etc., of the Church of the Atonement*, 48 Barb. 603 (1866).

however whether this rule applies to corporations having a capital stock.

105. Effect of Not Voting.—"When an elector or stockholder wholly omits to vote, he virtually consents that the election shall be made by those who choose to exercise their privilege, and he cannot afterward object that they have selected officers whom he does not approve. If he vote for a part only of the officers to be chosen, he waives his privilege as to the residue and tacitly consents that the other electors or stockholders may select such persons as they deem proper."²⁸²

Again, if the charter, statutes and by-laws are silent on the matter, a majority of the votes cast, though but a minority of the stock represented, prevails. Those having an opportunity to vote, and not voting, are regarded as acquiescing in the result of the vote actually cast.²⁸³

106. Authority of Tellers.—The authority of tellers, appointed to aid in checking the

²⁸² Bronson, J., *Matter of Union Ins. Co.*, 22 Wend. 591 (1840).

²⁸³ *State v. Chute*, 34 Minn. 135 (1855).

names of voters and in assorting and counting the votes cast at an election, does not cease with the resignation of the chairman, who appointed them, before they have reported the result of the vote. Said a court, in applying this principle to a town meeting case: "They were appointed to assist the moderator officially, and not personally, and their authority would survive a change in the person of the moderator."²⁸⁴

107. Count of Tellers.—How far is the count of tellers binding? On various occasions, when objections have been raised to their action, the chairman has revised it. Indeed, as they are simply his assistants, it is within his province to recount the vote.²⁸⁵ A challenged vote cannot be legally rejected during the count on the ground of illegality.²⁸⁶

At a special meeting of the electors of a

²⁸⁴ *Attorney General v. Crocker*, 138 Mass. 214 (1885).

²⁸⁵ *Bates v. Hutchins*, 33 Neb. 335 (1891).

²⁸⁶ *Hartt v. Harvey*, 32 Barb. 55 (1860).

school district, a vote was taken by a teller who reported twenty-nine in favor of the proposition before the meeting and twenty-six against it. Before the result was announced by the chairman, the objection was made that more votes had been cast than there were voters present. The chairman placed all the votes in two lists. There were twenty-six in each list. He then voted "no." The final result of the balloting, as declared by the chairman, so the court decided, must be accepted as the decision of the electors, and that parol evidence was admissible to show that the vote taken by the teller was not the final determination of the meeting.²⁸⁷

Sect. 6. Postponement of Meeting.

108. Directors Cannot Postpone a Meeting.—The directors, in the absence of express authority, have no power to postpone a general meeting of the company properly convened. For, if they had such

²⁸⁷ *Bates v. Hutchins*, 33 Neb. 335 (1891).

power to postpone a meeting for a week or a month, they might postpone it *sine die*.²⁸⁸

109. Postponement by Agreement.—If stockholders agree to postpone a meeting for the election of officers to a specified time, or such action is taken as justifies the owners of a majority of the stock present in believing there will be such a postponement, an election by the minority, who take advantage of the absence of the majority, is not valid and will not be legally sanctioned.²⁸⁹

110. Postponement by Order of Court.—When a corporation is in the possession of receivers, a court will not, on the petition of the corporation, consider and decide the question of the propriety of postponing a meeting called for the election of directors.²⁹⁰

²⁸⁸ *Smith v. Paringa Mines*, 2 Ch. Div. 193 (1906).

²⁸⁹ *State v. Smalley*, 7 Ohio C. C. 400 (1893).

²⁹⁰ *Taylor v. Phila. & Reading R. Co.*, 7 Fed. 381 (1881).

Sect. 7. Ratification.

111. Ratification by Stockholders.—If a meeting of the stockholders is not called in the manner prescribed by statute or by-law, its action is valid if every stockholder who did not participate in the meeting ratified its action afterward.²⁹¹ Such action, however, to be effective must be done in an intelligent manner. The courts do not look with much favor on blanket resolutions of endorsement, especially if there are but few or no stockholders present besides the directors, who are simply endorsing their own action.²⁹²

112. Ratification of Stock Allotment.—Again, that a meeting was not regular would not affect the validity of its action and agreement in allotting the stock of the corporation, if all the stockholders were present and concurred therein.²⁹³

²⁹¹ *Benbow v. Cook*, 115 N. C. 324 (1894). See No. 42.

²⁹² See *Farmers Loan & Trust Co. v. San Diego Street Car Co.*, 45 Fed. 518 (1891).

²⁹³ *Sheldon Canal Co. v. Miller*, 40 Tex. Civ. App. 460 (1905).

113. Ratification of Separate Action by Directors.—A stockholder may also acquiesce in the action taken by the directors separately, and when such action is carried out by the corporation it is thereby bound.²⁹⁴

114. When Corporation is Bound by Acts of Meeting.—A corporation will be bound by a contract made by its board of directors, even though the meeting at which the contract was authorized was not legally called whenever the corporation has received and retained the benefit of the contract.²⁹⁵ Likewise a stockholder who was present at a meeting and assents to the action of the majority in authorizing the sale and transfer of its property, cannot afterwards repudiate the terms on which the sale was made.²⁹⁶ Of course the same rule applies to a stockholder

²⁹⁴ *J. K. Siphon Ventilator Co. v. Hutton*, 116 Ark. 545 (1915).

²⁹⁵ *J. K. Siphon Ventilator Co. v. Hutton*, 116 Ark. 545 (1915).

²⁹⁶ *Steinway v. Steinway*, 2 N. Y. App. Div. 301 (1896), affirmed 157 N. Y. 710.

in the purchase of property. If he was present and did not complain, he is bound by the transaction.²⁹⁷

Sect. 8. Withdrawal.

115. Cannot Withdraw.—When a meeting is once organized and all parties have participated, no person or faction can, by refusing to vote or by withdrawing, defeat the organization, or render the subsequent proceedings invalid.²⁹⁸ The stockholders who attend the meeting and then, without cause, voluntarily withdraw, are in no better position than those who voluntarily absent themselves.²⁹⁹ Even a majority of stockholders cannot capriciously withdraw, after a meeting has been legally organized, for the very purpose of breaking a quorum, and then ask the courts for relief on the ground that a quorum was

²⁹⁷ Carr v. Rochester Tumbler Co., 207 Pa. 392 (1904).

²⁹⁸ Commonwealth v. Vandegrift, 232 Pa. 53 (1911).

²⁹⁹ *Ibid.*

not present when the act of which they complain was done by themselves.³⁰⁰

116. Holding Second Meeting.—Nor can a stockholder holding a majority of the subscribed capital stock, who has acquiesced in the organization of a stockholders' meeting and participated in its business, afterwards withdraw and organize another meeting at the same time and in the same place, and elect the persons for whom he voted at the first meeting to be directors of the corporation. It is his duty to remain in the first organized meeting and there vote his stock. Nor can any one prevent him from voting his stock in that meeting though his ballot may be negatived. Notwithstanding its rejection, the persons for whom he voted who received the proper number of votes are elected, and their election will be sustained by the legal tribunals.³⁰¹

117. Effect of Withdrawal.—Suppose a

³⁰⁰ *Commonwealth v. Vandegrift*, 232 Pa. 53 (1911).

³⁰¹ *In re Argus Printing Co.*, 1 N. Dak. 434 (1891).

meeting is disorderly and a portion of the stockholders withdraw for the purpose of carrying out a preconceived scheme to organize and run the meeting in their own interest, and after organizing, but before voting, send an invitation to the other stockholders to come and vote, and they decline, what then? The invitation does not cure the radical defects of the second organization; therefore if it continues to act its action is invalid.³⁰²

Again, when no notice of the time and place of holding the annual meeting for the election of directors is given, as required by law, a director cannot be legally elected, even if all the stockholders were present whenever a part of them protest against the holding of the election and then withdraw.³⁰³ And when a motion to adjourn a stockholders' meeting has been carried and a sufficient number have withdrawn to reduce the number still present below a

³⁰² *Commonwealth v. Patterson*, 158 Pa. 476 (1893).

³⁰³ *People v. Matthiessen*, 193 Ill. App. 328 (1915).

majority of all the stock issued and outstanding, an election of officers cannot be lawfully held thereafter at that meeting, even though the adjournment was carried by an illegal vote.³⁰⁴

Sect. 9. Adjournment.

118. When is a Meeting Adjourned.—

When a motion to adjourn a meeting *sine die* is regularly made and put by the presiding officer, and carried by a majority vote, and the result is declared by the presiding officer, and there is no call for a division or appeal from the ruling of the chair, the meeting is legally terminated.³⁰⁵

When all stockholders have left the room and the story of the building in which the stockholders' meeting has been held, the meeting is deemed to have been adjourned and abandoned, even if the motion to adjourn was irregularly put to vote and was not lawfully adopted.³⁰⁶

³⁰⁴ *Bridgers v. Staton*, 150 N. C. 216 (1909).

³⁰⁵ *De Zavala v. Daughters of Rep. of Texas*, 58 Tex. Civ. App. 19 (1909).

³⁰⁶ *Western Cottage Piano & Organ Co. v. Burrows*, 144 Ill. App. 350 (1908).

119. Who Can Adjourn a Meeting.—A regularly convened meeting to elect directors cannot be legally adjourned except by act of the meeting; and the arbitrary adjournment of the meeting by the president does not vitiate the election of directors who have received the requisite number of votes.³⁰⁷ “To hold otherwise,” says one of the courts, “would be recognizing in the president of the stockholders’ meetings a right to prevent the annual election of the directors of the company, and a right to perpetuate in office, indefinitely, at his pleasure, himself and the board of directors of which he was chosen a member. He has no such right under any rule of law.”³⁰⁸

120. Unlawful Adjournment.—An adjournment of an annual meeting of a corporation for the purpose of preventing the minority stockholders from exercising their legal right is unlawful.³⁰⁹

³⁰⁷ *Chicago Macaroni Mfg. Co. v. Boggiano*, 202 Ill. 312 (1903).

³⁰⁸ *State v. Cronan*, 23 Nev. 437, 453 (1897).

³⁰⁹ *West Side Hospital of Chicago v. Steele*, 124 Ill. App. 534 (1906).

121. Adjournment by Committee.—While stockholders have clearly defined rights in adjourning their meetings, it does not follow that a commission or other officials, who are authorized to secure subscriptions for the stock of a corporation, and to give notice for its organization, have the same authority to adjourn a meeting as they have to call it. Much would depend on the statutory authority under which they act. But clearly their authority to organize and start a corporation is very different from that of the stockholders who have subscribed the capital and are to conduct it after the commission have completed their work.³¹⁰

Sect. 10. Absence from Meetings.

122. Effect of Absence.—"Those who voluntarily absent themselves from a meeting duly called for an election must recognize the validity of the election regularly made by those who do attend."³¹¹ On the other

³¹⁰ *Hardenburgh v. Farmers & Mechanics' Bank*, 3 N. J. Eq. 68 (1834).

³¹¹ *Gowen's Appeal*, 10 Pa. Weekly Notes, 85 (1881).

hand his failure to attend a meeting, though properly notified, to ratify the unauthorized acts of the directors of the company, does not operate as a ratification of them.³¹² Nor does he in designedly absenting himself from a stockholders' meeting surrender any right appertaining to the ownership of his stock, except his right to participate in the meeting.³¹³

123. Effect of Defective Notice of Meeting on Absentees.—Members are not estopped from questioning the legality of an election because, after publication of a notice of an annual meeting without mention of any election in the official organ of the association, they failed to appear at the meeting to object to the election.³¹⁴ Failure to attend such meeting is not tantamount to acquiescence in its proceedings.³¹⁵

³¹² *McFadden v. Leeka*, 48 Ohio St. 513 (1891).

³¹³ *Sylvania & Girard R. Co. v. Hoge*, 129 Ga. 734 (1907).

³¹⁴ See No. 38, 140.

³¹⁵ *Matter of Empire State Sup. Lodge*, 53 N. Y. Misc. 344 (1907).

CHAPTER V.

Adjourned Meetings.

124. What May be Done.—A meeting of a corporation called to do certain acts, and on a fixed day, may be adjourned to another day in order to finish the incomplete business. All corporations may transact any business at an adjourned meeting which they could have done at the original meeting without giving an additional notice.³¹⁶ On the other hand, nothing can be transacted at an adjourned

³¹⁶ Warner *v.* Mower, 11 Vt. 385 (1839); Western Improvement Co. *v.* Des Moines Nat. Bank, 103 Iowa, 455 (1897); Schoff *v.* Town of Bloomfield, 8 Vt. 472 (1836); Smith *v.* Law, 21 N. Y. 296 (1860); People *v.* Batchelor, 22 N. Y. 128 (1860); Scadding *v.* Lorant, 3 House of Lords Cas. 418 (1851); King *v.* Carmarthen, 1 Maul. & Sel. 697, 702 (1813); State *v.* Cronan, 23 Nev. 437, 456 (1897); *In re* Hammond, 139 Fed. 898, 901 (1905); 2 Cook on Corporations, § 601.

meeting without notice which could not be done at the first meeting without notifying the members of the business.³¹⁷

The statement of the rule by Judge Redfield has been often repeated and may be added: "All corporations, whether municipal or private, may transact any business at an adjourned meeting, which they could have done at the original meeting. It is but a continuation of the same meeting. Whether the meeting is continued without interruption for many days, or by adjournment from day to day, or from time to time, many days intervening, it is evident it must be considered the same meeting without any loss or accumulation of powers."³¹⁸

125. Who Can Call Meeting to Order.—

A person who has been chosen to preside at a corporation meeting is entitled to call an adjourned meeting to order, and to

³¹⁷ *Regina v. Grimshaw*, 59 Eng. Com. Law, 756 (1847).

³¹⁸ *Warner v. Mower*, 11 Vt. 385, 391 (1839); *Schoff v. Town of Bloomfield*, 8 Vt. 472 (1836); *Granger v. Grubb*, 7 Phila. 350 (1820.)

continue to preside unless superseded in some orderly and recognized parliamentary manner.³¹⁹

126. Length of Adjournment.—A regular annual meeting of the stockholders may be adjourned a reasonable time for proper reasons. What then is a proper reason? "To prevent the minority stockholders from receiving their legal rights to elect other directors and thus continuing the old board of directors in office is not a proper reason, when opposed by the minority stockholders or any of them." If the majority stockholders could for this reason adjourn the meeting, they may indefinitely prevent the minority from voting for directors.³²⁰

127. Notice of Meeting.—A notice need not be given of an adjourned meeting unless this is required by charter, statute or by-law.³²¹ In New York a by-law properly

³¹⁹ *Commonwealth v. Patterson*, 158 Pa. 476 (1893).

³²⁰ *West Side Hospital of Chicago v. Steele*, 124 Ind. App. 53 (1906).

³²¹ *Clark v. Wild*, 85 Vt. 212 (1911).

adopted by a corporation providing for the adjournment from time to time of a stockholders' meeting at which a quorum is not present, and the transaction of business at such adjourned meeting, without further notice, is valid. Directors therefore may be legally elected at the adjourned annual meeting of which due notice was given as required by the statute.³²²

Furthermore, whenever a stockholder has ratified the action of a regular meeting no notice to him of its adjournment is required.³²³

128. Voluntary Associations. Adjourned Meetings.—Meetings of a voluntary unincorporated association may be held from time to time in accordance with the usual methods of parliamentary procedure at which business may be transacted, without notice to the absentees.³²⁴

129. Who May Attend.—In an adjourned meeting stockholders not represented at

³²² *In re Hammond*, 139 Fed. 898 (1905).

³²³ *Callahan v. Chilcot Ditch Co.*, 37 Colo. 331 (1906).

³²⁴ *Ostrom v. Greene*, 161 N. Y. 353 (1900).

the first meeting and new stockholders are entitled to vote.³²⁵

130. Action by Minority Stockholders.—

A minority of shares, after the failure of the stated meeting for election of officers, cannot call a new meeting on their own authority and hold a valid election.³²⁶

On one occasion the stockholders of a corporation were notified that the annual meeting would be held as prescribed by its charter. The corporation was restrained by law from holding an election on the prescribed day. The minority stockholders afterward met, organized and adjourned to a subsequent day on which they met without having notified the others and elected directors. Their election was declared to be invalid.³²⁷

A minority of an unincorporated voluntary association may adjourn from time to time, even if a majority of all the members is necessary to constitute a quorum in order to lawfully transact business.³²⁸

³²⁵ *Bridgers v. Staton*, 150 N. C. 216 (1909).

³²⁶ *Haskell v. Read*, 68 Neb. 107, 115 (1903).

³²⁷ *State v. Bonnell*, 35 Ohio St. 10 (1878).

³²⁸ *Ostrom v. Greene*, 161 N. Y. 353 (1900).

131. When Election at Adjourned Meeting is Proper.—Not infrequently directors are elected at an adjourned meeting. Thus, at an election for thirteen directors the inspectors reported that there was a tie in the votes for one director. The stockholders then learned that four ineligible stockholders had received a majority of votes. Before the inspectors had made any formal report of the election the stockholders adjourned. At the adjourned meeting a new election was held in regular form. It was held that the first election was incomplete, and the second one was regular.³²⁹

But when an annual meeting is adjourned many times, and very unexpectedly at the adjourned meeting a new board of directors is chosen, such action is usually a fraud and may be set aside.³³⁰

132. Action of First Meeting May be Affirmed in Part.—Can a meeting called to affirm the action of a prior meeting affirm

³²⁹ *In re Newcomb*, 18 N. Y. Supp. 16 (1891).

³³⁰ *N. Y. & Boston Rapid Transit Co. v. Parrott*, 36 Fed. 462 (1888).

its action in part and reject it in part? This question has received an affirmative answer.³³¹ A resolution also passed by the requisite majority at a meeting may be confirmed at a subsequent meeting making it a special resolution, but it cannot be amended.³³²

133. Ascertainment of Legality of Meeting.—The legal status of an adjourned meeting cannot be established until the meeting has been held and some action taken, a vote on some proposition, or the election of some officers.³³³

³³¹ *In re* Trench Tubeless Tyre Co., 1 Ch. Div. 408 (1900).

³³² *Wall v. London & Northern Assets Corporation*, 2 Ch. Div. 469 (1898).

³³³ *Bridgers v. Staton*, 150 N. C. 216 (1909).

CHAPTER VI.

Quorum.

134. **What is a Quorum?**—When the quorum is not fixed by the constitution or the power that creates the body, the general rule is that a quorum is a majority of all the members;³³⁴ and a majority of this majority may legislate and do the work of the whole.³³⁵

This is the rule that applies to an organization or society composed of an indefinite number of members, like an ordinary business corporation, though its numbers are in truth limited. But the number is large

³³⁴ *State v. Ellington*, 117 N. C. 158 (1895); *Cleveland Cotton Mills v. Commissioners of Cleveland Co.*, 108 N. C. 678 (1891); *Ex parte Wilcocks*, 7 Cow. 102 (127); *Sargent v. Webster*, 54 Mass. 497 (1847); *Buell v. Buckingham & Co.*, 16 Iowa, 284 (1864).

³³⁵ *Ibid.*; *United States v. Ballin*, 144 U. S. 1 (1891).

as distinguished from the number of its directory. In a society or corporate organization, therefore, if there is no rule providing what number shall constitute a quorum, those who attend a regular meeting, held in accordance with established custom, constitute a quorum and may transact any business that fairly comes within the purpose for which the association was formed.³³⁶

And if the actual number is reduced by death or other cause, the number necessary to constitute a quorum remains unchanged; and at a meeting at which a quorum is present, a majority of those in attendance may act.³³⁷

135. One May Constitute a Quorum.—As the number is immaterial, one person may constitute a quorum³³⁸ though this

³³⁶ Matter of N. Y. Electrical Workers' Union v. Sullivan, 122 N. Y. App. Div. 764, 768 (1907); Ostrom v. Greene, 20 N. Y. Misc. 176 (1897).

³³⁷ Lockwood v. Mechanics' Nat. Bank, 9 R. I. 308 (1869).

³³⁸ Morrill v. Little Falls Mfg. Co., 53 Minn. 371 (1893).

has been questioned.³³⁹ In England one person who owns all the preferred stock of a corporation may hold a valid meeting.³⁴⁰

136. Presumption Concerning Quorum.—

If the records of a corporation show that a meeting was duly called, a proper notice given, and that business was transacted, the presumption is that a quorum of members was present unless the contrary clearly appears.³⁴¹

137. Majority in Interest.—In many states statutes regulate the mode of forming a quorum. Perhaps in all of them a majority in interest rather than a majority in number constitute a quorum. If a statute simply provides that “a majority of stockholders” shall constitute a quorum this means a majority in interest and not in number.³⁴²

³³⁹ *Sharpe v. Dawes*, 46 Law J. (Q. B.) 104 (1876); *In re Sanitary Carbon Co.*, 12 Pa. Weekly Notes, 223 (1877).

³⁴⁰ *East v. Bennett*, 1 Ch. Div. 163 (1910).

³⁴¹ *Citizens' Mutual Fire Ins. Co. v. Sortwell*, 90 Mass. 217 (1864).

³⁴² *Weinburgh v. Union St. R. Adv. Co.*, 55 N. J. Eq. 640, 646 (1897). See *Fredericks v. Pa. Canal Co.*, 109 Pa. 50 (1885).

A statute requiring that a majority of the stock must be represented, is mandatory and must be observed.³⁴³

Should a by-law require that at all legal meetings of the corporation at least one-third of the stockholders, holding at least one-third of the shares of stock, must constitute a quorum, the true meaning is, shares actually issued, and not the entire number.³⁴⁴ Again, if a by-law requires that a majority of the stock must be represented, this means a majority of the whole stock, two hundred and one shares out of four hundred shares for example, and not a majority of two hundred and forty-three shares, which were actually subscribed and taken.³⁴⁵

Again, when all the shares are voted the same way, it is immaterial that some of them were voted under proxies not duly executed, if a statute prescribes that the

³⁴³ *Hill v. Town*, 172 Mich. 508 (1912).

³⁴⁴ *Castner v. Twitchell-Champlin Co.*, 91 Me. 524 (1898).

³⁴⁵ *Ellsworth Woolen Mfg. Co. v. Faunce*, 79 Me. 440 (1887).

majority of the stock properly represented constitutes a quorum.³⁴⁶

138. Stockholder or Director Personally Interested.—A stockholder who is personally interested in a matter that is to come before a stockholders' meeting may be counted for the purpose of making a quorum; a different rule, however, applies to a member of a directors' meeting. In a case requiring the application of the principle to a director, the court said: "He could neither vote in favor of the resolution, nor by his presence help to create a quorum by which the other two directors could adopt it. He was as much a stranger to the board as if he had never been elected a director."³⁴⁷

139. When Minority in Interest May Act.—Unless charter, statute or by-law prevents, the stockholders duly present at a regular annual meeting duly called, although a minority in number and representing only a minority of the stock, may elect

³⁴⁶ Clark v. Wild, 85 Vt. 212 (1911).

³⁴⁷ Curtin v. Salmon River Gold Min. & Ditch Co., 130 Cal. 345, 349 (1900).

directors.³⁴⁸ And the same rule prevails in church and other organizations having no stock.³⁴⁹

But if a statute prescribes the number constituting a quorum for a meeting, the adjournment of such a meeting in recognition of a by-law requiring the representation of a greater number of shares for a quorum, cannot affect the question, what number is necessary for a quorum, at a subsequent meeting.³⁵⁰

140. Members Present Must be Counted.

³⁴⁸ *Eagle Iron Co. v. Colyar*, 156 Fed. 954 (1907); *Sylvania & Girard R. Co. v. Hoge*, 129 Ga. 734, 743 (1907); *Gilchrist v. Callopy*, 119 Ky. 110 (1904); *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371 (1893); *Green v. Felton*, 42 Ind. App. 675 (1908); *Ashcroft v. Hammond*, 132 N. Y. App. Div. 37 (1909); *Matter of Rapid Transit Ferry Co.*, 15 N. Y. App. Div. 530 (1897); *Ex parte Willcocks*, 7 Cow. 402 (1827); *Field v. Field*, 9 Wend. 394 (1832); *Brown v. Pacific Mail Steamship Co.*, 5 Blatchf. 525 (1867); *Columbia Bottom Levee Co. v. Meier*, 39 Mo. 53 (1866).

³⁴⁹ *Craig v. First Pres. Church*, 88 Pa. 42, 47 (1878); *Presbyterian Congregation v. Johnston*, 1 W. & S. 9 (1841).

³⁵⁰ *Clark v. Wild*, 85 Vt. 212 (1911).

—“Those who are present and can help to make up the quorum are expected to vote on every question, and their presence alone is enough to make the vote decisive and binding, whether they actually vote or not. The objects of legislation cannot be defeated by the refusal of any one to vote when present.³⁵¹ If eighteen are present, and nine vote, all in the affirmative, the measure is carried, the refusal of the other nine to vote being considered as a vote in the affirmative.”³⁵²

Likewise should a statute require a majority of the trustees to elect a president, a member who is present and does not vote, must be counted. At a meeting, therefore, at which twelve were present, and six votes only were given for a candidate, he was not elected.³⁵³ This rule does not

³⁵¹ See No. 38, 123, 124.

³⁵² Horr and Bemis on Municipal Policies, Ordinances, p. 42; *Rushville Gas Co. v. City of Rushville*, 121 Ind. 206 (1889).

³⁵³ *People v. Conklin*, 7 Hun, 188 (1876); *City of San Francisco v. Hazen*, 5 Cal. 169 (1859); *McCracken v. City of San Francisco*, 16 Cal. 591 (1860).

conflict with the rule stated elsewhere, for trustees or directors are a fixed body in number as distinguished from the stockholders in a corporation.

141. Majority Quorum May be Changed by Statute.—By statute the rule constituting a majority as a quorum may be changed. Thus a statute required a country school superintendent to be elected by a majority of the members present. The whole number at the meeting was one hundred and twelve. A received fifty-six votes and was declared elected. B received fifty-five and one refused to vote. The court held that the one who refused to vote must be counted and so A did not receive a majority. "The legal intendment," said the court, "was that he voted for neither, or for the minority candidate."³⁵⁴

142. Quorum of Directors.—A quorum of a board of directors of a corporation is a majority of the entire board as it would be constituted if all vacancies were filled,

³⁵⁴ Commonwealth v. Wickersham, 66 Pa. 134 (1870).

and not a majority of the board as it remains with the vacancies unfilled. And the power of the board to transact corporate business is neither diminished nor defeated by the fact of a vacancy in the board, unless the number of statutory directors be reduced below the required number.³⁵⁵

³⁵⁵ *Pennington v. G. W. Pennington Sons*, 27 Cal. App. 57 (1915); *Wright v. Commonwealth*, 109 Pa. 560 (1885); *Porter v. Lassen County, etc., Co.*, 127 Cal. 261 (1899).

CHAPTER VII.

Who Can Vote.

Sect. 1. Real Owner, Trustee, Executor,
etc.

143. Rights of Real Owner.—Unless prevented by charter, statute or by-law a stockholder may vote at any corporate meeting, even though no certificate of stock has been issued to him, for this is merely evidence of ownership.³⁵⁶ Nor will his indebtedness for his stock prevent him from voting.³⁵⁷ “It would seem,” says the Supreme Court of California, “upon principle, that the real owner of

³⁵⁶ *Sherwood v. Wallin*, 154 Cal. 735, 740 (1908); *Beckett v. Houston*, 32 Ind. 393 (1869).

³⁵⁷ *Haskell v. Read*, 68 Neb. 107 (1903); *Savage v. Ball*, 17 N. J. Eq. 142 (1864); *American, etc., Co. v. State Board*, 56 N. J. Law, 389 (1894); *People v. Albany & Susquehana R.*, 53 Barb. 344, 386 (1869), affirmed 57 N. Y. 161; *Downing v. Potts*, 23 N. J. Law, 66 (1851).

stock should be entitled to represent it at the meetings of the corporation and that the mere fact that he does not appear as owner upon the books of the company, should not exclude him from the privilege of doing so.’³⁵⁸ But it is equally clear that if inspectors were not bound by the book record of ownership and went behind these books on the demand of every objector, an annual meeting for the election of directors might prove a veritable nightmare, the end of which no one could reasonably predict. Consequently in many, perhaps all, of the states, only stockholders or those holding proxies for them can vote at a general election.³⁵⁹ Nor need a stockholder have paid for his stock in full to enable him to vote all his stock at an election.³⁶⁰

³⁵⁸ *Allen v. Hill*, 16 Cal. 113, 119 (1860).

³⁵⁹ *Matter of Utica Fire Alarm Tel. Co.*, 115 N. Y. App. Div. 821 (1906); *Matter of Argus Co.*, 138 N. Y. 557, 573, 577 (1893); *Matter of Glen Salt Co.*, 17 N. Y. App. Div. 234 (1897), affirmed 153 N. Y. 688.

³⁶⁰ *Haskell v. Read*, 68 Neb. 107 (1903); *Price v. Holcomb*, 89 Iowa, 123 (1893); *Savage v. Ball*, 17 N. J. Eq. 142 (1864).

144. Statutory Regulations.—In many states statutes regulate the mode of voting stock. By these the stock record of ownership is usually made the conclusive test of the right to vote.³⁶¹ With so many corporations issuing an enormous number of shares, such regulation seems indispensable. The most general rule is, stockholders who thus appear on the stock books at the date of a meeting are entitled to vote the stock.³⁶²

145. Subscriber.—An informal subscriber to the stock of a corporation, that is to be formed, is entitled to an opportunity to pay the initial statutory instalment of his subscription before organization, and to participate in the first meeting of the stockholders for the purpose of organizing.³⁶³ On the other hand, it has been held that a

³⁶¹ *State v. Cronan*, 23 Nev. 437 (1897).

³⁶² *Bernheimer v. Louisville Property Co.*, 221 Fed. 273 (1914); *Royal Con. Mining Co. v. Royal Con. Mines*, 157 Cal. 737 (1910); *Reynolds v. Bridenthal*, 57 Neb. 280 (1898); *In re Argus Printing Co.*, 1 N. Dak. 434 (1891); *Breck v. Brewster*, 150 N. Y. App. Div. 202 (1912).

³⁶³ *Windsor Hotel Co. v. Schenk*, 76 W. Va. 1 (1915).

subscriber for stock has no right, before its issue, to vote or participate in the management of the corporation.³⁶⁴ Of course any statute regulating the matter must be observed.

Again, if the only fact to support one's claim as a stockholder is that he is a subscriber, yet whenever a corporation deals with him as the owner of stock, and secures from him a large sum based on a contract with him as the owner thereof, for all practical purposes, relatively to the other stockholders, he should be treated as standing on an equal footing with them in voting power.³⁶⁵

146. Trustee.—A trustee is the legal owner of stock standing in his name, and as against the corporation and all the

³⁶⁴ *Owensboro Seating & Cabinet Co. v. Miller*, 130 Ky. 310 (1908).

³⁶⁵ *Ga. Life Ins. Co. v. Bell*, 141 Ga. 502, 507 (1914), citing *Reed v. Gold*, 102 Va. 37 (1903); *Cotter v. Butte & Ruby Valley Smelting Co.*, 31 Mont. 129 (1904); *South Dakota v. North Carolina*, 192 U. S. 286 (1904); *Spear v. Crawford*, 14 Wend. 20 (1835).

world except the beneficiary, he may vote the stock for all purposes including that of consolidating the corporation.³⁶⁶ If, therefore, stock is standing in his name as "A Trustee," he is the proper person to vote it.³⁶⁷

147. Trustee Under a Will.—A testator may impose limitations and restrictions on the voting power of the trustees who are to execute a trust established under his will.³⁶⁸ But they cannot be compelled to vote a certain way in a legal proceeding that would have the effect of granting an injunction.³⁶⁹

Should trustees under a will holding a majority of the stock of a corporation disagree and one of them be enjoined from voting it, a minority stockholder is entitled to an injunction to restrain the other trustee from holding an election, or voting the

³⁶⁶ *Market St. R. Co. v. Hellman*, 109 Cal. 571 (1895); *State v. Leete*, 16 Nev. 242 (1881).

³⁶⁷ *Hoppin v. Buffum*, 9 R. I. 513 (1870).

³⁶⁸ *Elger v. Boyle*, 69 N. Y. Misc. 273 (1910).

³⁶⁹ *Matter of Dietz*, 138 N. Y. App. Div. 283 (1910).

stock alone, until the right to vote the stock has been legally decided.³⁷⁰

148. Exercise of Trustee's Authority by Proxy.—If, on the transfer books of a company, stands the name of A, with the addition of cashier as the owner of some shares, these can be voted only by him, or by his attorney duly authorized by him for that purpose. A proxy from A's successor would not confer such authority although accompanied with proof that he was A's successor as cashier of the bank, and had authority to act and vote in his place on all stocks standing in his name as cashier. Though the word cashier clearly indicates that the stock is held in trust, still, as the courts have held, only the trustee in whose name the stock stands, or a person duly authorized by him, is entitled to vote on the stock.³⁷¹

149. Naked Trustee. Beneficiary.—A naked trustee who holds the title to stock

³⁷⁰ *Villamil v. Hirsch*, 138 Fed. 690 (1905); same case, 143 Fed. 654.

³⁷¹ In *Matter of Election of Directors of the Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838).

without any real interest therein may vote it, but in the way directed by the beneficiary.³⁷² And if the latter attends a meeting and represents the stock, notice of it to the naked trustee is immaterial.³⁷³ In Pennsylvania however the vote of an undisclosed trustee cannot be received;³⁷⁴ likewise in Colorado, by statute, a person to whom stock has been issued as trustee, without the knowledge or consent of the owner, is not a *bona fide* stockholder and cannot vote.³⁷⁵

150. Stock Deposited with a Trustee.—
A corporation that deposits stock of another company with a trustee by an agreement in writing "reserving all the rights, powers

³⁷² *Wilson v. Prop. of Central Bridge*, 9 R. I. 590 (1870); *Conant v. Millaudon*, 5 La. Ann. 542 (1850); *Ex parte Holmes*, 5 Cow. 426 (1826); *McHenry v. Jewitt*, 26 Hun, 453 (1882).

³⁷³ *American Nat. Bank v. Oriental Mills*, 17 R. I. 551 (1891).

³⁷⁴ *Coolbaugh v. Herman*, 221 Pa. 496 (1908).

³⁷⁵ *Stewart v. Mahoning Mining Co.*, 54 Cal. 149 (1880); *Smith v. San Francisco & North Pacific R.*, 115 Cal. 584 (1897).

and privileges belonging or incident to the ownership of the stock, including the right to vote the stock," has a right to exact a proxy from the trustee to vote the stock for a lawful merger of the company.³⁷⁶

And if stock is deposited with directors as the agent of the owner for the purpose of having them vote it and afterward sell it, the owner may recall it before sale; doubtless he may do so at any time.³⁷⁷

151. Executor.—Until the settlement and division of an estate, the executors have the power to vote the stock of their testator.³⁷⁸ And if one of joint executors issues a proxy authorizing the vote of the stock belonging to the estate and the other executor is present at the stockholders' meeting, the vote of the stock by the executor who is present is deemed a revocation of the proxy given by his co-executor.³⁷⁹

³⁷⁶ *Pennsylvania R. Co. v. Pennsylvania Company*, 205 Pa. 219 (1903).

³⁷⁷ *Woodruff v. Dubuque & S. C. R. Co.*, 30 Fed. 91 (1887).

³⁷⁸ See No. 189, 190.

³⁷⁹ *Schmidt v. Mitchell*, 101 Ky. 570 (1897).

He may even vote as against those who are beneficially interested in the stock.³⁸⁰

And if a will gives to one of three executors the power to vote the stock, and directs the other two to give him a proxy for that purpose, which they decline to do, a court will order the proxy to be given, even if he intends to vote himself into office and the other two believe he will prove a bad manager.³⁸¹ But whenever a statute exists prohibiting a trustee from voting for himself as a director, of course a court would not overthrow the statute to carry out the will of a testator.

Whenever stock is held by executors who are not united in voting it, they cannot vote at all.³⁸²

152. Foreign Executor.—A foreign executor, on producing before the inspectors of election an exemplified copy of his letters of administration, may vote on the stock

³⁸⁰ *Jones v. Green*, 129 Mich. 203 (1901).

³⁸¹ *Lafferty's Estate*, 154 Pa. 430 (1893).

³⁸² *Tunis v. Hestonville, etc., R. Co.*, 149 Pa. 70 (1892); *Matter of Election of The Pioneer Paper Co.*, 36 How. Pr. 105, 111 (1864).

standing in the testator's name on the company's book. This privilege is allowed by the great rule of interstate comity.³⁸³

153. Administrator.—An administrator has the right to vote stock belonging to the estate,³⁸⁴ even though it has not been transferred to him in the books of the company.³⁸⁵ That the decedent held the stock subject to a trust or duty in favor of others does not affect the question. The right to vote follows the legal ownership of the stock, and the corporation has nothing to do with the equities between the owner and third persons.³⁸⁶

Sect. 2. Corporation, Option Holder, etc.

154. Corporation Cannot Vote its Own Shares.—A corporation cannot vote its own shares of stock, either directly by the

³⁸³ *In re* Cape May & Del. Bay Nav. Co., 16 At. Rep. 191 (1888).

³⁸⁴ Matter of North Shore Staten Island Ferry Co., 53 Barb. 556 (1872).

³⁸⁵ *Ibid.*; Schoharie Valley R. Case, 12 Abb. Pr. (N. S.) 394 (1872).

³⁸⁶ 2 Cook on Corporations, § 612.

corporate officers, or indirectly by a trustee. The right to do this is suspended while they are owned by the corporation. This inhibition is imposed by the common law, also in many states by statute.³⁸⁷

155. May Vote Shares Owned in Another Corporation.—As one corporation may purchase and hold stock in another corporation, unless restricted by statute, it may, as an incident of its ownership, vote at stockholders' meetings like any other stockholder.³⁸⁸ Likewise an incorporated church, owning shares in a building association, may vote by a proxy duly authorized by the board of trustees.³⁸⁹

³⁸⁷ *O'Connor v. International Silver Co.*, 68 N. J. Eq. 680 (1904); *Ex parte Holmes*, 5 Cow. 426 (1826); *Ex parte Willcocks*, 7 Cow. 102 (1827); *In re St. Lawrence Steamboat Co.*, 44 N. J. Law, 529 (1882); *Hawes v. Anglo-Saxon Petroleum Co.*, 101 Mass. 385 (1869); *State v. Smith*, 48 Vt. 266 (1876); *New England Mutual Life Ins. Co. v. Phillips*, 141 Mass. 535 (1886); *Clark v. National Steel Wire Co.*, 82 Conn. 178 (1909).

³⁸⁸ *Davis v. U. S. Electric Power & Light Co.*, 77 Ind. 35 (1893); *Mottu v. Primrose*, 23 Md. 482, 501 (1865).

³⁸⁹ *State v. Rohlffs*, 19 At. 1099 (N. J. 1890).

156. Stock Owned in a Rival Company.—

If a corporation owns a majority of the stock of a rival company, will a court, at the instance of a minority stockholder of the latter company, enjoin the other from voting its stock and thus obtaining control? The answer turns on the answer to another question, has a corporation the right to buy the stock of another rival company? Whenever it has the right to buy, it has the right to vote the stock.³⁹⁰ To explore the rights to buy the stock would carry us too far afield. It may be said that the right to buy the stock of rival companies of late years has been much restricted by statute. These have been enacted to prevent the growth of monopolies. The courts have divided, as well as the legislatures, on the expediency of such a course. Some courts have sanctioned the purchase of stock of rival com-

³⁹⁰ *Taylor v. Southern Pacific R.*, 122 Fed. 147, 151 (1903); *Rogers v. Nashville, etc., R.*, 91 Fed. 299 (1898); *Bigelow v. Calumet & Hecla Mining Co.*, 167 Fed. 704 (1908).

panies,³⁹¹ other courts have opposed such purchases.³⁹²

157. Stock Owned by Partnership.—A partner of a firm, which owns stock in a corporation, may represent the stock in all matters relating thereto in the usual management of the firm's business. He may therefore receive and waive notice of stockholders' meetings, vote at them, in short, participate in all other matters that are usual in such meetings.³⁹³ And on the death of a partner, the surviving partner has the right to represent the partnership and vote on its stock.³⁹⁴

³⁹¹ *Oelberman v. New York & Northern R.*, 77 Hun, 332 (1891); *Theis v. Spokane Gas Light Co.*, 49 Wash. 477 (1908).

³⁹² *Milbank v. New York, Lake Erie & Western R.*, 64 How. Pr. 20 (1882); *Memphis & Charleston R. Co. v. Woods*, 88 Ala. 630 (1899); *George v. Central R. & Bkg. Co.*, 101 Ga. 607 (1893); *Am. Rep. & Construction Co. v. Linn*, 93 Ala. 610 (1890); *Coler v. Tacoma, etc., Co.*, 65 N. J. Eq. 347 (1903); *Clarke v. Central R.*, 50 Fed. 338 (1892); same case, 62 Fed. 328.

³⁹³ *Kenton Furnace R. & Mfg. Co. v. McAlpin*, 5 Fed. 737 (1880).

³⁹⁴ *Ibid.*

158. Failed Stockholder.—The holder of a majority of the stock in a corporation who makes an assignment for the benefit of his creditors, yet retains the stock in his name and votes it with the assignee's knowledge and without objection, is justified in thus acting.³⁹⁵

159. Unlawful Holder.—A stockholder is not entitled to vote on shares sold contrary to law for less than their value.³⁹⁶

160. Husband for Wife.—In Alabama, by statute, a husband may vote his wife's stock by oral authority. In many of the states their statutes prescribe the authority that may be exercised by a husband in voting his wife's stock, and more generally in acting for her at stockholders' meetings.³⁹⁷

161. Option Holder.—An owner of stock who has been given an option thereon may vote it.³⁹⁸ A obtained an option on valuable

³⁹⁵ Third Nat. Bank of Cincinnati *v.* Jackson, 156 Fed. 144 (1907).

³⁹⁶ Kimball *v.* New England Roller Grate Co., 69 N. H. 485 (1898); 2 Cook on Corporations § 620.

³⁹⁷ Hoene *v.* Pollak, 118 Ala. 617, 624 (1898).

³⁹⁸ *In re* Newcomb, 18 N. Y. Supp. 16, 21 (1891).

property and with B and C undertook to organize a corporation and was allowed a specified number of shares for his interest in the option and his services. He also paid cash for some shares issued to him. After the failure of the original organization the stockholders at a full meeting and without protest passed a resolution releasing its stockholders from all liability beyond the amount paid in cash for which certificates of stock had been issued, and that the stock issued to A for his option and services be surrendered. A refused to surrender his shares, and at a subsequent meeting he was allowed to vote only the shares for which he had paid in money. The court held that as A had been present when the resolution was passed without protest, he was concluded thereby and entitled to vote only as he was permitted.³⁹⁹

162. Preferred Stockholder.—Preferred stockholders, unless the right is expressly withheld from them by the terms or condi-

³⁹⁹ *Meisenheimer v. Alexander*, 162 N. C. 226 (1913).

tions under which the stock is issued, may exercise the same rights as other stockholders, and therefore may vote at all elections.⁴⁰⁰

163. Bondholder.—A contract by which the holder of bonds issued by the corporation is authorized to vote at corporate meetings, is unconstitutional and against public policy.⁴⁰¹

164. Stock Dividend Holder.—As a stock dividend becomes a part of the capital stock, the holder of course can vote on this like any other stock.⁴⁰²

165. Stock Voted by Direction of Court.—A court may authorize the committee of an incompetent to vote on stock owned by him and may make the committee eligible to election as president of the corporation.⁴⁰³

⁴⁰⁰ *Miller v. Ratterman*, 47 Ohio St. 141 (1890);
1 Cook on Corporations, § 269. See No. 166.

⁴⁰¹ *Durkee v. People*, 153 Ill. 354 (1895), affirming
53 Ill. App. 396.

⁴⁰² *Bailey v. Railroad Co.*, 22 Wall. 604, 637 (1874).

⁴⁰³ *Matter of Andrews*, 125 N. Y. App. Div. 457
(1908).

166. Minority Stockholders.—There are many statutes, by-laws and agreements relating to the voting of stock. Thus in many states the holders of preferred stock cannot vote, or only to a qualified extent, and not generally like other stockholders.⁴⁰⁴ In Canada the articles of an association provided that the holders of a block of stock, who were a minority of the stock issued, should elect three of the five directors, who were to manage the company. This arrangement was set aside as contrary to positive law and public policy.⁴⁰⁵

Sect. 3. Transferor and Transferee.

167. Transferor and Transferee.—There are two other important classes of stockholders to be mentioned, the vendors and vendees of stock, and pledgors and pledgees. Different rules apply to the two classes. It must be remembered that in all cases

⁴⁰⁴ *People v. Koenig*, 133 N. Y. App. Div. 756, 758 (1909); *State v. Swanger*, 190 Mo. 561 (1905). See No. 162.

⁴⁰⁵ *Colonial Printing & Pub. Co. v. Dunsmuir*, 32 Sup. Ct. of Canada, 679 (1902).

statutory or charter regulations prevail over all others. Until a transfer is entered on the books of the company, it confers on "the transferee, as between himself and the company, no right beyond that of having the transfer properly entered. Until that is done, the person in whose name the stock is entered on the books of the company is, as between himself and the company, the owner to all intents and purposes, and particularly for the purpose of an election."⁴⁰⁶ A stockholder's right to vote on stock claimed to have been purchased by him, but not transferred to him, can therefore be successfully challenged on that ground.⁴⁰⁷ But while an unrecorded transfer does not affect the record holder's

⁴⁰⁶ *People v. Robinson*, 64 Cal. 373, 375 (1883); *State v. Ferris*, 42 Conn. 560 (1875); *Hoppin v. Buffum*, 9 R. I. 513 (1870); *Gilbert v. Manchester Iron Mfg. Co.*, 11 Wend. 627 (1834); *Bank of Utica v. Smalley*, 2 Cow. 770 (1824); *Commerce Bank of Buffalo v. Kortright*, 22 Wend. 348 (1839); *Schoharie Valley R. Co. Case*, 12 Abb. Pr. (N. S.) 394 (1872); *State v. Pettinele*, 10 Nev. 14 (1875).

⁴⁰⁷ *State v. Smith*, 15 Or. 98, 118 (1887).

right to vote, the transfer as between the immediate parties is valid.⁴⁰⁸

168. Mode of Transfer.—If no by-law exists regulating the transfer of stock, any mode of conveyance legally sufficient to transfer the title to any other property that is transferable will suffice to vest the legal title in the assignee, and entitle him to all the rights inhering in the legal owner of the stock.⁴⁰⁹

Suppose, however, one could have voted on the day fixed for an election, but has parted with his stock before the actual day of election, can he vote it? To this question a negative answer must be given.⁴¹⁰

169. Length of Ownership Before Record Holder Can Vote.—In many states statutes exist declaring that transfers must be made a specified number of days before the holder can vote on them. These statutes are

⁴⁰⁸ *Matter of Glen Salt Co.*, 17 N. Y. App. Div. 234 (1897); *McNeil v. Tenth Nat. Bank*, 46 N. Y. 325, 331 (1871).

⁴⁰⁹ *People v. Devin*, 17 Ill. 84 (1855).

⁴¹⁰ *Johnston v. Jones*, 23 N. J. Eq. 216 (1872).

strictly construed.⁴¹¹ If a statute declares that stock not held within twenty days of a meeting cannot be voted, the statute does not apply to stock acquired twenty days before an adjourned meeting.⁴¹² In some states stock transferred on the day of meeting can be voted.⁴¹³

Sect. 4. Pledgor and Pledgee.

170. When Pledgor Can Vote.—Many questions have arisen between pledgors and pledgees concerning their respective rights to vote the pledged stock. In many cases the answer turns on the answer to an introductory question, what are the terms of the pledge or subsequent agreement about voting it, for these often determine the matter. For, unless the terms of the pledge or agreement are illegal, they must

⁴¹¹ *In re Vernon*, 1 Penn. (Del.) 202 (1898); *In re Newcomb*, 18 N. Y. Supp. 16 (1891); *Matter of Argus Co.*, 138 N. Y. 558; 578 (1893); *Matter of Glen Salt Co.*, 17 N. Y. App. Div. 234 (1897); *Pender v. Lushington*, 6 Ch. Div. 70 (1877).

⁴¹² *Bridgers v. Staton*, 150 N. C. 216 (1909).

⁴¹³ *Ibid.*,¹

be respected and fix the rights of the parties.⁴¹⁴ Moreover, when they have thus agreed, other stockholders cannot complain.⁴¹⁵ If there is no agreement at common law, the right to vote such stock follows the legal title, of which the certificate and stock book in some states or jurisdictions furnish *prima facie* evidence, that is, evidence deemed complete or satisfactory until overthrown by other evidence;⁴¹⁶

⁴¹⁴ *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357 (1894); *Heath v. Silverthorn, etc., Co.*, 39 Wis. 146 (1875); *Goetzinger v. Donahue*, 138 Wis. 103 (1909); *Commonwealth v. Dalzell*, 152 Pa. 217 (1893); *Granite Brick Co. v. Titus*, 226 Fed. 557 (1915).

⁴¹⁵ *State v. Ferris*, 42 Conn. 560, 569 (1875).

⁴¹⁶ *Ex parte Willcocks*, 7 Cow. 402 (1827); *In re Cecil*, 36 How. Pr. (1869); *In re St. Lawrence Steamboat Co.*, 44 N. J. Law, 529 (1882); *Cohen v. Big Stone Gap Iron Co.*, 11 Va. 468 (1910); *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357 (1894); *Heath v. Silverthorn, etc., Co.*, 39 Wis. 146 (1875); *Goetzinger v. Donahue*, 138 Wis. 103 (1909); *Commonwealth v. Dalzell*, 152 Pa. 217 (1893); *Aultman's Appeal*, 98 Pa. 505, 516 (1881); *Commonwealth v. Patterson*, 188 Pa. 476 (1893); *Shelmerdine v. Welsh*, 47 Leg. Int. 26 (1890); *Schofield v.*

in other jurisdictions the corporate records are regarded as conclusive.⁴¹⁷

When, therefore, the record remains unchanged, the pledgor can vote as he did before pledging his stock.⁴¹⁸ In a case that has been often cited, it was held that the pledgor had no right to vote the stock after the truth had been established in the proper tribunal, which may also compel him to give the pledgee a proxy, and *vice versa*.⁴¹⁹ And the real holder may vote the stock even though it stands on the corporate books in the pledgee's name.⁴²⁰ But if the pledgor has transferred his right to vote

Union Bank, 2 Cranch C. C. 115 (1815). And in some states this is the law by statute or charter. *Elyea v. Lehigh Salt Mining Co.*, 169 N. Y. 21 (1901); *Am. Bonding & Trust Co. v. Pacific Brewing & Malting Co.*, 34 Wash. 10 (1904).

⁴¹⁷ *Royal Con. Mining Co. v. Royal Con. Mines*, 157 Cal. 737 (1910).

⁴¹⁸ *Schofield v. Union Bank*, 2 Cranch C. C. 115 (1815); *Vowell v. Thompson*, 3 Cranch C. C. 428 (1829); *Clarke v. Central R. & Bkg. Co.*, 50 Fed. 338 (1892); *Case of Jacob Barker*, 6 Wend. 509 (1830).

⁴¹⁹ *In re Argus Printing Co.*, 1 N. Dak. 434 (1891).

⁴²⁰ *State v. Smith*, 15 Or. 98 (1887); *Allen v. Hill*, 16 Cal. 113 (1860).

his stock, he cannot ask a court to restore his right to vote it until the purpose for which it was pledged has been satisfied, or to interfere with the pledgee's use of that power, unless he has abused it.⁴²¹ In such a case he may be restrained.⁴²² Thus when the owner of a majority of the stock has been fraudulently deprived of his stock by his pledgee, who has thereby deprived him of control and claims the stock as his own, the court will enjoin him from voting the stock.⁴²³

Again, a pledgor who pledges his stock not in good faith as security for a loan, but to enable the pledgee to vote it and effect an unlawful purpose, cannot thus defeat the statute, which provides that the real owner, the pledgor, may vote his stock.⁴²⁴

⁴²¹ *Hinckley v. Pfister*, 83 Wis. 64 (1892).

⁴²² *McHenry v. Jewitt*, 90 N. Y. 58 (1882); *State v. Smith*, 15 Or. 98 (1887); *Brewster v. Hartley*, 37 Cal. 15 (1869); *Vowell v. Thompson*, 3 Cranch C. C. 428, Fed. Cas. No. 17022 (1829).

⁴²³ *Ayer v. Seymour*, 5 N. Y. Supp. 650 (1889).

⁴²⁴ *Thomas v. International Silver Co.*, 72 N. J. Eq. 224 (1907).

171. When Pledgee Can Vote.—Passing to the pledgee, whenever he is registered as owner of the stock on the books of the company, its officers, in conducting an election, will not look behind them to ascertain who is the real owner.⁴²⁵ If, therefore, the stock stands in his name he can vote it.⁴²⁶ But a court of equity may do so, and may enjoin a pledgee from voting the stock pledged in prejudice of the pledgor's rights.⁴²⁷

⁴²⁵ A statute provided that all persons holding shares "either in their own right or as trustees" shall have the right to vote. Two persons held the title to stock entered in the corporation books as trustees. Both were pledgees and entitled to vote. *Commonwealth v. Dalzell*, 152 Pa. 217 (1893).

⁴²⁶ *Pullman v. Upton*, 96 U. S. 328 (1878); *In re Argus Printing Co.*, 1 N. Dak. 434 (1891); *Adderly v. Storm*, 6 Hill, 624 (1844); *Rosevelt v. Brown*, 11 N. Y. 148 (1854); *Holyoke Bank v. Burnham*, 65 Mass. 183 (1853); *Crease v. Babcock*, 51 Mass. 525 (1846); *Magruder v. Colston*, 44 Md. 349 (1876); *Wheelock v. Kost*, 77 Ill. 296 (1875); *Hale v. Walker*, 31 Iowa, 344 (1871).

⁴²⁷ *Haskell v. Read*, 68 Neb. 107 (1903); *State v. Smith*, 15 Or. 98 (1887); *Brewster v. Hartley*, 37 Cal. 15 (1869); *Vowell v. Thompson*, 3 Fed. Cases

172. Acquiescence by Pledgor in Pledgee's Voting.—Again, if the pledgor should acquiesce for years in the control of the stock by the pledgee, who is the record owner, and makes no attempt to inform the corporation of his ownership until a contested election, and not even until the counting of votes, it is too late for him to assert his rights.⁴²⁸

173. Certificate Signed in Blank.—If a certificate of stock has been assigned in blank as collateral security, but has never been transferred to the pledgee on the books of the company, though a memorandum has been entered on the stub of the certificate in the stock book, the pledgee is not a stockholder within the legal requirement and cannot therefore vote at a stockholders' meeting.⁴²⁹

174. To Whom Notice of Meetings Should be Sent.—Notices of meetings should be

No. 17022 (1829); *McHenry v. Jewitt*, 26 Hun, 453 (1882).

⁴²⁸ *Hoppin v. Buffum*, 9 R. I. 513 (1870).

⁴²⁹ *Osborn v. Detroit Kraut Co.*, 160 N. W. Rep. 442 (Mich. 1916).

sent of course to the one who has the right to vote the stock.⁴³⁰ When, therefore, the stock stands in the pledgor's name, he retains this right, and notices should be sent to him; and the same rule applies to the pledgee.⁴³¹

Sect. 5. Evidence of Ownership.

175. Evidence of Ownership. Books.—

The three books used for recording and transferring stock are the certificate book, transfer book and stock ledger. These books furnish *prima facie* evidence of ownership.⁴³² The ledger is subordinate to the other books.⁴³³

176. Court May Go Behind Entries in

⁴³⁰ *In re* Argus Printing Co., 1 N. Dak. 434 (1891); *Strong v. Smith*, 15 Hun, 222 (1878); *In Matter of Barker*, 6 Wend. 509 (1830).

⁴³¹ *Haskell v. Read*, 68 Neb. 107 (1903); *McDaniels v. Flower Brook Mfg. Co.*, 22 Vt. 274 (1850); *Merchants Bank v. Cook*, 21 Mass. 405 (1826); *Ex parte Willcocks*, 7 Cow. 402 (1827).

⁴³² *Hoppin v. Buffum*, 9 R. I. 513 (1870); *Downing v. Potts*, 23 N. J. Law, 66 (1851).

⁴³³ *Downing v. Potts*, 23 N. J. Law, 66 (1851).

Books.—Whenever an application is made under the New York statute to settle a contest arising out of a disputed election, the court may go behind the entries in the transfer book of the company to determine whether a transfer appearing thereon was a sale or only a pledge of the shares, and whether the pledgor or pledgee was entitled to vote them.⁴³⁴

177. Inspectors Cannot Go Behind Them.

—These books, however, are conclusive on inspectors. Neither they nor stockholders can successfully dispute the right of any one to vote whose name appears by the company's books to be the holder of stock legally issued.⁴³⁵ Says Chief Justice Holmes:

⁴³⁴ *Strong v. Smith*, 15 Hun, 222 (1878), citing *Ex parte Holmes*, 5 Cow. 426 (1827); *Ex parte Willcocks*, 7 Cow. 402 (1827); *In re Barker*, 6 Wend. 509 (1830); *Matter of Long Island R. Co.*, 19 Wend. 37 (1837).

⁴³⁵ *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371, 379 (1893); *People v. Robinson*, 64 Cal. 373 (1883); *State v. Ferris*, 42 Conn. 560 (1875); *New York & New Haven R. Co. v. Schuyler*, 34 N. Y. 30, 80 (1865); *Bank of Commerce's Appeal*, 73 Pa. 59 (1873); *Hoppin v. Buffum*, 9 R. I. 513 (1870); *In re*

"The corporation has to go by its record in determining the right to vote, and therefore if a certificate of stock shows a certain person to be a member, the corporation must recognize him as a member, with the right to vote as an incident to his membership."⁴³⁶

178. When Books are Conclusive.—By statute in New York the transfer or stock book furnishes the conclusive answer to the question, who shall vote the stock recorded.⁴³⁷ Likewise in New Jersey the

St. Lawrence Steamboat Co., 44 N. J. Law, 529 (1882); *Downing v. Potts*, 23 N. J. Law, 66 (1851); *Ex parte Willcocks*, 7 Cow. 402 (1827).

⁴³⁶ *J. H. Wentworth Co. v. French*, 176 Mass. 442, 443 (1900), citing *Crease v. Babcock*, 40 Mass. 334, 344 (1839); *National Bank v. Case*, 99 U. S. 628, 631 (1878); *Adderly v. Storm*, 6 Hill, 624, 627 (1844); *Franklin Bank v. Commercial Bank*, 36 Ohio St. 350, 355 (1881); *Magruder v. Colston*, 44 Md. 349, 356 (1876); *Commonwealth v. Dalzell*, 152 Pa. 217, 223 (1893); *Canadian Imp. Co. v. Lea*, 74 N. J. Eq. 234, 250 (1908).

⁴³⁷ Law 1901, Ch. 355; *Vandenburgh v. Broadway Underground R. Co.*, 29 Hun, 348, 355 (1883); *In re Long Island R.*, 19 Wend. 37 (1837); *In re Mohawk & Hudson R.*, 19 Wend. 135 (1838).

books of a corporation are the only evidence of the stockholders who are entitled to vote for directors.⁴³⁸

⁴³⁸ *In re* Cedar Grove Cemetery Co., 61 N. J. Law, 422 (1898).

CHAPTER VIII.

Proxies.

Sect. 1. Authority of Proxy.

179. Authority Conferred by Written Proxy.—At common law a stockholder has no right to cast his vote by proxy.⁴³⁹ But if a stockholder gives a written proxy, he cannot afterward claim that it was not authorized by statute, charter, or by by-law.⁴⁴⁰ The right to vote by proxy is often given by charter, and may be created by by-law,⁴⁴¹ which may come into existence

⁴³⁹ *Taylor v. Griswold*, 14 N. J. Law, 223 (1834); *Philips v. Wickham*, 1 Paige, 590 (1829); *McKee v. Home Sav. & Trust Co.*, 122 Iowa, 731 (1904); *Craig v. First Pres. Church*, 88 Pa. 42 (1878); *Commonwealth v. Bringham*, 103 Pa. 134 (1883).

⁴⁴⁰ *Farish v. Cienequita Copper Co.*, 12 Arizona, 235 (1909).

⁴⁴¹ *Market St. R. v. Hellman*, 109 Cal. 571 (1895); *Thompson-Starrett Co. v. E. B. Ellis Granite Co.*,

by a long and unbroken practice.⁴⁴² And if the charter of a corporation is silent on the subject of enacting a by-law conferring the right to vote by proxy, its authority to do this is implied.⁴⁴³ And if a statute gives the right to vote by proxy, the right cannot be restricted by by-law that only stockholders shall serve as proxies.⁴⁴⁴ Furthermore, a corporation owning stock in another corporation may accept proxies to vote its stock.⁴⁴⁵

86 Vt. 282 (1912); *People v. Crossley*, 69 Ill. 195 (1873); *Philips v. Wickham*, 1 Paige, 590, 598 (1829); *Wilson v. Academy of Music*, 43 Leg. Inst. 861 (1886); *Commonwealth v. Detwiller*, 131 Pa. 614 (1890).

⁴⁴² *Walker v. Johnson*, 17 App. Cases (D. C.), 144 (1900); *Union Bank of Maryland v. Ridgeley*, 1 Harris & Gill (Md.), 324 (1827); *Miller v. Eschbach*, 43 Md. 1 (1875).

⁴⁴³ *Walker v. Johnson*, 17 App. Cases (D. C.), 144 (1900).

⁴⁴⁴ *Peoples' Home Sav. Bank v. San Francisco*, Sup. Ct. 104 Cal. 649 (1894); *In Matter of Light-hall, etc., Co.*, 47 Hun, 258 (1888).

⁴⁴⁵ *Bigelow v. Calumet & Hecla Mining Co.*, 167 Fed. 704 (1908); *Rogers v. Nashville, etc., Co.*, 91 Fed. 299 (1898); *Taylor v. Southern Pacific R. Co.*, 122 Fed. 147 (1903).

180. Form and Requirements.—A proxy need not be in any prescribed form, nor be executed with any particular formality. A seal is not required, though it is often added.⁴⁴⁶ It is sufficient if requisite authority appears to be conferred on its face, and is free from all reasonable grounds of suspicion of its genuineness. It need not be acknowledged or proved.⁴⁴⁷ But if a statute or by-law requires that proxies be witnessed, of course this requirement must be observed.⁴⁴⁸ And if proxies have been thrown away as useless, oral or other proper evidence may be employed to prove their existence and lawful use.⁴⁴⁹

A proxy that is restricted by resolution contrary to the power given to a stockholder by the company's charter is void.⁴⁵⁰

⁴⁴⁶ *State v. Newell*, 75 N. J. Law, 26 (1907).

⁴⁴⁷ *Matter of Election of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 535 (1882); *In re Cecil*, 36 How. Pr. 477 (1869).

⁴⁴⁸ *Harben v. Phillips*, 23 Ch. Div. 14 (1882).

⁴⁴⁹ *Haywood, etc., Co. v. Bryan*, 6 Jones Law, (N. C.) 82 (1858).

⁴⁵⁰ *Matter of White v. N. Y. State Ag. Society*, 45 Hun, 580 (1887).

181. Proxy Must Show His Authority.

Minor.—The right of voting by proxy at an election of an incorporated company is not a general right; and the claimant must show a special authority for that purpose.⁴⁵¹ A minor has no authority to give a proxy.⁴⁵² Rejecting all the votes cast by proxy, if there is still a majority, the minority are bound by their action.⁴⁵³

182. Proxy Must Observe His Instructions.—"If a stockholder executes a proxy, the person to whom it runs is the stockholder's agent, and he must vote in accordance with the instructions given either openly or tacitly to him by the real owner of the shares. The agency is of such a character that it may be abrogated by the appearance of the shareholder in person at the meeting, or by the execution of a subsequent proxy which would cancel the former one, the whole situation being under

⁴⁵¹ *Craig v. First Pres. Church*, 88 Pa. 42 (1878); *Taylor v. Griswold*, 14 N. J. Law, 223 (1834).

⁴⁵² *State v. Voight*, 35 Ohio Cir. 255 (1913).

⁴⁵³ *Craig v. First Pres. Church*, 88 Pa. 42 (1878); *Taylor v. Griswold*, 14 N. J. Law, 223 (1834).

the control of the stockholder himself."⁴⁵⁴ A proxy holder who wilfully perverts his authority commits a fraud.⁴⁵⁵

183. How Written Proxy is Construed.—

A written proxy is a power of attorney and is interpreted by the rules that apply to these instruments. They receive a strict interpretation, and the authority conferred by them never extends beyond whatever may be needful to carry the maker's intention into effect.⁴⁵⁶ But if the written proxy commits an error or mistake in voting, the stockholder is as much bound thereby as if he had acted in like manner.⁴⁵⁷

If, therefore, a proxy is given to act at a particular meeting, which for any reason is not held, the holder must have a fresh written proxy before he can act at another.⁴⁵⁸

⁴⁵⁴ Howell, V. C., *Bache v. Central Leather Co.*, 78 N. J. Eq. 484, 486 (1911).

⁴⁵⁵ *Witham v. Cohen*, 100 Ga. 670 (1897).

⁴⁵⁶ *Marie v. Garrison*, 13 Abb. N. C. 210, 235 (1883).

⁴⁵⁷ *In re Mathiason Mfg. Co.*, 122 Mo. App. 437 (1907).

⁴⁵⁸ *Howard v. Hull*, 5 Rail. & Corp. Law Jour. 255 (1888).

Again, if a written proxy to vote at the annual meeting grants "all the power" that the maker "would possess if personally present at such meeting," the holder is not authorized to vote for the reorganization of the corporation, as such business is not within the nominal scope of the business of a stockholders' meeting.⁴⁵⁹ Nor does a written proxy given to transact the ordinary business of a corporation extend to the sale or liquidation of a company's business.⁴⁶⁰ More especially a general proxy authorizing the holder to vote on all matters that may properly come before a stockholders' meeting does not authorize him to vote on the question of liquidation of the corporation under a statute passed after the proxy was given.⁴⁶¹ And if a written proxy authorizes the holder to

⁴⁵⁹ *Farrish v. Cieneguita Coffee Co.*, 12 Arizona, 235 (1909).

⁴⁶⁰ *Abbott v. American Hard Rubber Co.*, 33 Barb. 578 (1861); *Cumberland Coal & Iron Co. v. Sherman*, 30 Barb. 553, 577 (1859); *Matter of Wheeler*, 2 Abb. Pr. (N. S.) 361 (1866).

⁴⁶¹ *McKee v. Home Sav. & Trust Co.*, 122 Iowa, 731 (1904).

vote for the increase of the stock of the company, this does not authorize him to vote for the issue of new stock in exchange for the stock of another company.⁴⁶² Finally a written proxy to vote does not confer "authority to take so important a step as to demand a poll."⁴⁶³

184. Construction of Written Proxy with Power to Act as Substitute.—If the form of appointment of the written proxy authorizes the proxy to vote as fully as the stockholder could do, were he present, the proxy may vote on the question of opening the ballots and of adjournments. In short, "when a stockholder sends a person to represent him at a stockholders' meeting, the person sent may do anything at that meeting necessary to a full and complete exercise of the stockholder's right to vote at such meeting."⁴⁶⁴ The giver of the

⁴⁶² See *Marie v. Garrison*, 13 Abb. N. C. 210 (1883).

⁴⁶³ *In re Haven Gold Mining Co.*, 20 Ch. Div. 151, 157 (1881).

⁴⁶⁴ *Arnold, J., Forsyth v. Brown*, 2 Pa. Dist. 765 (1893).

proxy is estopped by the vote of his proxy with respect to any irregularities in the proceedings or calls of the meetings which he could have waived if personally present.⁴⁶⁵ And if he wishes to repudiate the action of his proxy, he must use the most active diligence.⁴⁶⁶

Sect. 2. Presentation and Voting.

185. Presentation at Meeting.—In England proxies deposited abroad have been allowed a vote by telegraph without producing the written proxy at the meeting, whenever there is not time to send them.⁴⁶⁷

186. Proxy without Ballot Attached.—A proxy to which no ballot is attached should not be counted as a vote. But when in the same envelope two proxies are found and two ballots not attached to the proxies, the ballots should be appropriated to them.⁴⁶⁸

⁴⁶⁵ *Columbia Nat. Bank v. Mathews*, 85 Fed. 934 (1898), and cases cited; *Synott v. Cumberland Valley B. & L. Association*, 117 Fed. 379 (1902).

⁴⁶⁶ *Synott Case*, 117 Fed. 379.

⁴⁶⁷ *In re English, etc., Bank*, 3 Ch. Div. 385 (1893).

⁴⁶⁸ *Pope v. Whitridge*, 110 Md. 468 (1909).

187. When Proxy Cannot Vote.—A proxy cannot vote when the maker or owner is present.⁴⁶⁹ But no objection can be made to the validity of a corporate election because an alternative in a proxy votes the stock, though the principal attorney was present, when no stockholders who executed proxies complained, and all of them subsequently ratified in a formal way the action of the alternative.⁴⁷⁰

188. Proxies May be Enjoined.—A proxy may also be enjoined although his principal is not made a party to the suit and is not served.⁴⁷¹

Sect. 3. Proxy by Testator, Executor. Blanks.

189. Proxy by Testator.—A testator may direct how his stock shall be voted. A testator directed that stock should be

⁴⁶⁹ *In re Schwartz & Gray*, 77 N. J. Law, 415 (1909).

⁴⁷⁰ *Commonwealth v. Roydhouse*, 233 Pa. 234 (1911).

⁴⁷¹ *Brown v. Pacific Mail Steamship Co.*, 5 Blatchf. 525 (1867).

voted as his son should direct and appoint; and that his executors should give him a proxy for the purpose. Not having received such a proxy, he did not possess authority to vote the stock in the face of a dissent by his co-executors.⁴⁷²

A proxy given by an executor of a stockholder for the purpose of representing his estate at a stockholders' meeting is limited to the powers and duties of stockholders. Any act or agreement therefore, made by the proxy affecting the interest of the estate as a creditor of the corporation, is not binding on the executor, unless it is afterward ratified by him.⁴⁷³

190. Proxy by Executor.—A proxy given by an executor must be accompanied by a specific direction of the manner in which the vote is to be cast with no discretion whatever left to the holder of the proxy. His authority is simply to perform the purely ministerial function of voting the stock as directed.⁴⁷⁴

⁴⁷² *Tunis v. Hestonville, etc., R. Co.*, 149 Pa. 70 (1892).

⁴⁷³ *Moore v. Ensley*, 112 Ala. 228 (1895).

⁴⁷⁴ *State v. Voight*, 35 Ohio Cir. 255 (1913).

191. Blanks.—There have been many questions concerning blanks in written proxies, authority to fill them, and the effect of filling them by the proxy. It has been held that if the name of the proxy has been left in blank by the maker, which is filled by the holder before election, the maker may challenge its completeness.⁴⁷⁵ If, however, he does not challenge it, the presumption is the name was written therein by the maker's authority.⁴⁷⁶

A proxy may be good though the day and month of an election at which it is to be used is left blank.⁴⁷⁷ And if the day of an election is not fixed when the written proxy was given, it is good and the blank may be filled by the proxy. In

⁴⁷⁵ *Chauncey v. Arnold*, 24 N. Y. 330 (1862); *Dutchess & Columbia R. Co. v. Mabbett*, 58 N. Y. 297 (1874); *Burns v. Lynde*, 88 Mass. 305 (1863).

⁴⁷⁶ *Matter of White v. N. Y. State Ag. Society*, 45 Hun, 580 (1887); *Matter of Cecil*, 36 How. Pr. 477 (1869); *Commercial Bank of Buffalo v. Kortright*, 22 Wend. 348 (1839).

⁴⁷⁷ In *Matter of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 535 (1882).

such a case in which a proxy referred to a new election of directors by the stockholders, the date of which had not been fixed, the court said: "We think that the persons to whom such proxies were delivered were even authorized to fill in the blank with regard to the day of the month, and that they might have done so at the moment when they tendered these proxies to the inspectors, and claimed the right to vote thereon."⁴⁷⁸ More generally it has been declared that the date of the execution of the written proxy and the date of the meeting at which it is to be used may be afterwards filled by any person who is duly authorized to do so by the maker, even though the date of the meeting has not been fixed.⁴⁷⁹ The English rule is perhaps still broader, for a stockholder who signs a written proxy in blank, and sends it to another to be used in the ordinary way, thereby confers on him an implied authority

⁴⁷⁸ *In re Townshend*, 18 N. Y. Supp. 905 (1892).

⁴⁷⁹ *Sadgrove v. Bryden*, 1 Ch. Div. 318 (1906); *Ernest v. Loma Gold Mines*, 2 Ch. Div. 572 (1896), and 1 Ch. Div. 1 (1897).

to fill up the written proxy with his own name and to use it for the purpose intended.⁴⁸⁰

Sect. 4. Revocation.

192. Revocation.—A written proxy may be revoked at any time. The presumption, however, is that the proxy has authority to act until the meeting for which the written proxy was given has been held,⁴⁸¹ unless the giver has died, for death effectuates its revocation.⁴⁸² If the revocation of a proxy is duly presented to the judge of election, or is in the possession of the person holding the proxy, the ballot attached thereto should not be counted.⁴⁸³ If one gives proxies to different persons, the proxy last given is deemed a revocation of all former proxies.⁴⁸⁴ And if two such proxies with the ballots attached are presented

⁴⁸⁰ *Ex parte Duce*, 13 Ch. Div. 429 (1880).

⁴⁸¹ *Harger v. McCullough*, 2 Denio, 119 (1846).

⁴⁸² *Tunis v. Hestonville, etc.*, R. Co., 149 Pa. 70 (1892).

⁴⁸³ *Pope v. Whitridge*, 110 Md. 468 (1909).

⁴⁸⁴ *Ibid.*

to the judges of election, one for each side, and they cannot determine from an inspection of the proxies which of the two was given last, neither of the ballots attached to the proxies should be counted;⁴⁸⁵ nor should the election be delayed for the purpose of bringing in witnesses to determine which proxy represented such intention.⁴⁸⁶

193. Proxy for Valuable Consideration.—

Even though a proxy is given for a valuable consideration, it may be revoked if it is to be used for a fraudulent purpose.⁴⁸⁷ And, if a proxy is collected for one purpose and is used for a different one, this is a palpable fraud, and the courts will grant such relief as the case requires.⁴⁸⁸ But if one has promised for a valuable consideration to give his written proxy to

⁴⁸⁵ *Pope v. Whitridge*, 110 Md. 468 (1909).

⁴⁸⁶ *Ibid.*

⁴⁸⁷ *Reed v. Bank of Newburgh*, 6 Paige, 337 (1837).

⁴⁸⁸ *Townsley v. Bankers Life Ins. Co.*, 56 N. Y. App. Div. 232 (1900); *In re Septimus Parsonage & Co.*, 2 Ch. Div. 424, 429 (1901).

another, he may be legally compelled to fulfil his agreement.⁴⁸⁹

194. Effect of War.—The breaking out of war between two countries does not operate to revoke a proxy, and the holder may continue to use the proxy after the war has ended.⁴⁹⁰

195. Irrevocable Proxy.—The most general rule is, that a proxy is revocable at any time. And this rule is still rigidly observed in some states.⁴⁹¹ In recent years, however, various voting arrangements

⁴⁸⁹ *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357 (1894).

⁴⁹⁰ *Monseaux v. Urquhart*, 19 La. Ann. 482 (1867).

⁴⁹¹ *Sheppard v. Rockingham Power Co.*, 150 N. C. 776, 780 (1909); *Woodruff v. Dubuque & S. C. R. Co.*, 30 Fed. 91 (1887); *Bridgers v. Staton*, 150 N. C. 216 (1909); *Kreissl v. Distilling Co. of America*, 1 N. J. Eq. 5 (1900); *Griffith v. Jewitt*, 15 Week. Law Bull. 419 (1886); *Cone v. Russell*, 48 N. J. Eq. 208 (1891); *Clowes v. Miller*, 60 N. J. Eq. 179 (1900); *Shepaug Voting Trust Cases*, 60 Conn. 553, 578 (1890); *Clarke v. Central R. & Bkg. Co.*, 50 Fed. 338 (1892); *Schmidt v. Mitchell*, 101 Ky. 570 (1897).

have been sanctioned by the courts in many states that are not in harmony with this rule. But a stockholder may transfer his certificate to his children who, at the same time, may give him an irrevocable power to vote the stock during his life.⁴⁹²

196. Illegal Agreement to Give Proxies.—

An agreement among stockholders not to give proxies without the consent of all and with the view of mutual protection and present ownership is illegal and void.⁴⁹³

⁴⁹² *Matter of Brandreth*, 58 N. Y. App. Div. 575 (1901).

⁴⁹³ *Fisher v. Bush*, 35 Hun, 641 (1885).

CHAPTER IX.

Voting.

Sect. 1. Mode of Voting. Ballot.

197. What is a Vote.—"A vote is but the expression of the will of the voter, and whether the formula to give expression to such will be a ballot or *viva voce*, the result is the same, either is a vote."⁴⁹⁴

198. Mode of Voting.—When no mode of voting is prescribed by law, any mode not legally forbidden which ensures to each member the right to vote, and by which the will of the majority can be fairly obtained, may be adopted.⁴⁹⁵

199. Ballot.—A ballot signifies a "little poll," and means "a paper so prepared by printing or writing thereon as to show

⁴⁹⁴ People v. Pease, 27 N. Y. 45 (1863).

⁴⁹⁵ State v. Green, 37 Ohio St. 227, 230 (1881)
See No. 78.

the voter's choice."⁴⁹⁶ And whenever an officer is required to be chosen by ballot and the record does not specify the mode, the legal presumption is that he was chosen in that manner.⁴⁹⁷ Furthermore, the vote of a religious society at an annual meeting that the officers shall always be elected by ballot does not invalidate an election of officers by show of hand vote at a subsequent annual meeting. And for the reason that those who assembled at the earlier annual meeting could not by any action bind those who assembled at the subsequent meeting.⁴⁹⁸ Lastly, should a by-law require that in electing directors this shall be done by nomination and ballot, a name written or printed on a ballot may well be called a nomination and ballot.⁴⁹⁹

200. Show of Hands.—There are various

⁴⁹⁶ *In re Mathiason Mfg. Co.*, 122 Mo. App. 437, 444 (1907).

⁴⁹⁷ *Blanchard v. Dow*, 32 Me. 557 (1851); *Mussey v. White*, 3 Greenl. (Me.) 290 (1825).

⁴⁹⁸ *Wardens of Christ Church v. Pope*, 74 Mass. 140 (1857).

⁴⁹⁹ *Wirth v. Fehlberg*, 30 R. I. 536 (1910).

forms or modes of voting. By the common law the mode of voting is by a show of hands. Unless charter or statute otherwise prescribes, this rule still prevails, and, if a vote is thus taken, it will prevail though the majority in number of shares may have voted differently.⁵⁰⁰ The chairman's declaration of the result of the vote is conclusive.⁵⁰¹

201. Need not Vote for All Electors.—

Of course a stockholder is not required to vote for any larger number of persons than he chooses; and any number of persons receiving a majority of lawful votes are elected, although there is a failure to elect the full number required by law.⁵⁰²

202. Effect of Neglect to Vote by Ballot.—

Probably in most corporations elections must be by ballot. *Viva voce* votes when

⁵⁰⁰ *In re Horbury Bridge, etc., Co.*, 11 Ch. Div. 109 (1879).

⁵⁰¹ *Arnot v. United African Lands*, 1 Ch. Div. 518 (1901).

⁵⁰² *Vandenburgh v. Broadway Underground R. Co.*, 29 Hun, 348 (1883).

the law requires them to be given by ballot are nullities;⁵⁰³ nevertheless, persons for whom such votes have been cast as directors are directors *de facto*.⁵⁰⁴

203. Ballot Containing Two Names.—

When a ballot for one person contains two names, one in writing and one in print, and the voter in the act of voting ought to erase one of the names and fails to do so, the ballot affords no information of his preference and cannot be counted.⁵⁰⁵

204. Rejection of Ballot.—If a ballot is cast naming candidates for electors, but failing to give the number of votes cast for each, or the number of shares for which the votes were cast, the ballot should be rejected in the count. Nor is the ignorance and inexperience of the proxy

⁵⁰³ Commonwealth v. Read, 2 Ash. (Pa.) 261 (1839).

⁵⁰⁴ San Joaquin Land Co. v. Beecher, 101 Cal. 70 (1894).

⁵⁰⁵ People v. Pangburn, 3 N. Y. App. Div. 456 (1896).

who cast the ballot ground for relief on the part of his principal.⁵⁰⁶

205. Vote May be Changed.—A stockholder may change his vote before the result is announced,⁵⁰⁷ but only once.⁵⁰⁸ The same rule may be more widely applied. If, therefore, all who have voted discover, before all the ballots have been cast and before any canvass or result of the election has been announced, that the ballots cast do not express their intention, it is proper to return them and to correct them so as to express the true intention of those who cast them.⁵⁰⁹

206. When Vote Cannot be Received.—After the result of an election has been announced, the presiding officer, even though acting in the capacity also of inspector of the election, has no authority to receive the vote and announce a different result.⁵¹⁰

⁵⁰⁶ Matter of Mathiason Mfg. Co., 122 Mo. App. 437 (1907).

⁵⁰⁷ State v. McGann, 64 Mo. App. 225 (1895).

⁵⁰⁸ *Ibid.*

⁵⁰⁹ Zierath Comb. Drill Co. v. Croake, 21 Cal. App. 222 (1913).

⁵¹⁰ Matter of Application of Williams, 57 N. Y. Misc. 327 (1908).

Sect. 2. Stock Voting. Ineligible Candidates. Objections.

207. Majority in Interest.—At common law each member of a company is entitled to one vote.⁵¹¹ By statute existing everywhere perhaps, “the majority in interest at a stockholders’ meeting controls, in other words, voting is by shares of stock.”⁵¹² If there be no statute in the way, a corporation may provide that stockholders shall have one vote for each share held by them up to ten shares,⁵¹³ who may also cast their votes by proxy.⁵¹⁴

⁵¹¹ *Commonwealth v. Nickerson*, 10 Phila. (Pa.) 55 (1873); *Gregg v. Granby Min. & Smelting Co.*, 164 Mo. 616 (1901); *In re Mathiason Mfg. Co.*, 122 Mo. App. 437 (1907); *Western Cottage & Piano Co. v. Burrows*, 144 Ill. App. 350, 369 (1908); *Hays v. Commonwealth*, 82 Pa. 518 (1876); *Proctor Coal Co. v. Finley*, 98 Ky. 405 (1895); *Baker’s Appeal*, 109 Pa. 461 (1885).

⁵¹² *Western Cottage & Piano Co. v. Burrows*, 144 Ill. App. 350, 369 (1908); *Weinburgh v. Union St. Ry. Adv. Co.*, 55 N. J. Eq. 640 (1897); *In re Mathiason Mfg. Co.*, 122 Mo. App. 437 (1907).

⁵¹³ *Commonwealth v. Detwiller*, 131 Pa. 614 (1890).

⁵¹⁴ *Ibid.*

208. Effect of Disregarding Rule in Voting Stock.—Suppose a statute or by-law, providing that every stockholder may cast one vote for every share of stock at a stockholders' meeting is disregarded for many years, can a stockholder then demand its application as if it had always been observed? Clearly stockholders cannot set aside or repeal a statute by disregarding it. The courts have also decided that the non-enforcement of a by-law does not destroy its efficiency, and that its application may be demanded at the proper time by any stockholder.⁵¹⁵

In New York, though a statute provided that each share should have one vote, an attempt was made at a stockholders' meeting to limit the voting by each stockholder to one vote, regardless of the number of shares he owned or represented. The president refused to receive the vote on the basis of the number of shares. Yet he was clearly wrong and the court so

⁵¹⁵ *Proctor Coal Co. v. Finley*, 98 Ky. 405 (1895); *Bank of Holly Springs v. Pinson*, 58 Miss. 421, 439 (1880).

decided, though the party holding the majority in interest had been guilty of sharp practice in issuing some of them.⁵¹⁶

209. When Stock Vote Need not be Taken.—A stock vote need not be taken without a call or demand therefor.⁵¹⁷

210. Meaning of Majority.—"When a vote is taken under a statute which provides that a majority is to be ascertained by taking and recording the ayes and noes of those present at the meeting, we think that those who do not respond as their names are called should not be counted at all, and that certainly they could not be counted as if they had voted no."⁵¹⁸ Lord Mansfield⁵¹⁹ said that "whenever electors are present and do not vote at all they virtually acquiesce in the election

⁵¹⁶ Matter of Rochester Dist. Tel. Co., 40 Hun, 172 (1886).

⁵¹⁷ Jones v. Concord Montreal R., 67 N. H. 119, 145 (1891).

⁵¹⁸ Vann, J., Smith v. Proctor, 130 N. Y. 319, 322 (1891).

⁵¹⁹ Oldknow v. Wainwright, 2 Burr. 1017, 1021 (1760); State v. Green, 37 Ohio St. 227 (1881)

made by those who do." Lord Denman⁵²⁰ said: "A vote by a majority of a meeting means a majority of those who choose to take a part in the proceedings of the assembly."

211. Limitation on Power of Majority.—

If the stockholders are unequally divided, the majority can override the minority only within definite limits. One limit is set by the law of *ultra vires*, that which the corporation cannot do, even with the consent of all the stockholders. But this law has no application to an unincorporated or unprivileged association.⁵²¹

A meeting was called to elect three directors. A majority deeming they had a right to elect five, voted for that number. The minority who voted for three were declared as casting only the proper votes and consequently their candidates were elected.⁵²²

⁵²⁰ *Gosling v. Veley*, 7 Ad. & El. 406, 456 (N. S. 4187).

⁵²¹ 1 Lindley on the Law of Companies, p. 435, 436 (6th ed.).

⁵²² *State v. Thompson*, 27 Mo. 365 (1858).

What is *ultra vires* is one of the most difficult questions pertaining to corporations. The question often arises, and notwithstanding numerous answers, will doubtless long continue to perplex the courts. This, we repeat, is a barrier which the majority cannot force, and if they attempt to do so the courts will prevent them. But it is equally clear that minority stockholders not infrequently seek to avail themselves of it without reason.⁵²³

212. When Majority Cannot Vote to Consolidate.—As each stockholder contracts with the other that their money shall be employed for the purposes specified in the certificate of incorporation, and for no other purpose, “in the absence of legislation permitting a variation of the provisions of this fundamental contract, by vote of a majority of the stockholders, no majority, however large, has a right to divert any part of the joint capital, however small, to any purpose not consistent with and growing

⁵²³ See 1 Lindley on the Law of Companies, 434-446.

out of this original, fundamental agreement." And if such a diversion is attempted by the majority, a single dissenting stockholder is entitled to an injunction to prevent them from accomplishing their purpose.⁵²⁴

213. Stockholder May Vote in a Transaction between Corporation and Himself.—

While there may be such a fraud in a contract made by all the directors of a corporation with themselves as individuals, as renders the contract voidable, and which, therefore, may on proper proceedings be set aside, for example, the lease of a railroad owned by themselves to the corporation of which they are directors, "there is no such fraud in a stockholder's voting upon a transaction between the corporation and himself."⁵²⁵

⁵²⁴ William B. Riker & Son Co. *v.* United Drug Co., 79 N. J. Eq. 580 (1911).

⁵²⁵ Knowlton, J., *Nye v. Storer*, 168 Mass. 53, 55 (1897), citing *North-West Transportation Co. v. Beatty*, 12 App. Cases, 589 (1887); *Gamble v. Queens County Water Co.*, 123 N. Y. 91 (1890); *Bjorngaard v. Goodhue Co. Bank*, 49 Minn. 483

To this statement of the law may be added another by Chief Justice Gilfillan of the Supreme Court of Minnesota:⁵²⁶ "[The stockholders] are not trustees nor agents for each other in the matter of voting upon any proposition that may come before a meeting of the stockholders. In voting, each must be guided by his own judgment as to what is for the best interest of the corporation. The fact that he may have a personal interest, separate from the others or from that of the corporation in the matter to be voted upon, does not affect his right to vote." But the majority stockholders may not use their power of voting for the purpose of defrauding the minority.⁵²⁷

A stockholder, therefore, may vote on a question in which he has a personal interest

(1892). See also *Twin-Lick Oil Co. v. Marburg*, 91 U. S. 587 (1875); *Pneumatic Gas Co. v. Berry*, 113 U. S. 322 (1884); *Conyngham's Appeal*, 57 Pa. 474 (1868).

⁵²⁶ *Bjorngaard v. Goodhue Co. Bank*, 49 Minn. 483, 487 (1892)

⁵²⁷ *Ibid.*

beside his interest as a stockholder.⁵²⁸ But "there are many situations in which stock may be so placed that it becomes inequitable or illegal for it to be voted."⁵²⁹

214. Time of Objecting to a Vote.—

Usually, the objection to one's exercise of the right to vote, must be made at the time of exercising his right. There can be no long delay, and not after he has completed the act of voting. In Pennsylvania, however, since the statute of 1873, the objection to one's voting need not be simultaneous with the offer of his ballot. A delay of a few minutes on the part of the objector does not render the protest void.⁵³⁰

The objections to voting stock that has been regularly transferred on the books of the corporation by statute in Pennsylvania, must be put in writing supported by affidavit.⁵³¹

⁵²⁸ *Middletown v. Arastraville, etc., Co.*, 146 Cal. 219 (1905).

⁵²⁹ *Clarke v. Central Railroad & Bkg. Co.*, 50 Fed. 338, 343 (1892).

⁵³⁰ *Coolbaugh v. Herman*, 221 Pa. 496 (1908).

⁵³¹ Act May 26, 1893, P. L. 141; *Deal v. Erie Coal & Coke Co.*, 248 Pa. 48, 58 (1815).

Sect. 3. Improper Voting. Regulations and Restrictions.

215. Stockholder's Good Faith in Voting Cannot be Questioned.—Says Vice Chancellor Leaming: "There appears to be no such recognized trust relation between stockholders of a corporation as will impose upon one who may be interested in a transaction, the authorization of which is being acted upon at a stockholders' meeting, the burden of establishing his good faith in the vote which he casts. The action may be so clearly detrimental to the interests of the corporation itself as to render it a fraudulent destruction of the rights of minority stockholders; but the personal interests of a stockholder will not in itself deny such stockholder the right to cause his stock to be voted in the line of his personal interests."⁵³²

216. How Stockholder Can Vote.—"As a matter of law as distinguished from conscience a person may vote on a question

⁵³² *Merriman v. National Zinc Corporation*, 82 N. J. Eq. 493, 500 (1913).

in which he happens to have a personal interest opposed to that of the company.”⁵³³

217. Payment for Stock before Voting.—

In New York stockholders must pay for their stock before they can vote. This rule is founded on the theory or belief that a subscription is merely a contract, and that payment is needful to become a member.⁵³⁴ If, however, the owner of stock, though he has only partly paid for it, has nevertheless voted it continuously at meetings with the knowledge of all the stockholders, it is too late to object that such stock ought not to have been voted.⁵³⁵

218. Payment for Vote.—It is illegal for a stockholder to sell his right to vote.⁵³⁶ Likewise an agreement to vote in a particular way in consideration of a personal

⁵³³ 1 Lindley on the Law of Companies, p. 428 (6th ed.). See *Green v. Felton*, 42 Ind. App. 675, 683 (1908); *U. S. Steel Corporation*, 64 N. J. Eq. 807 (1903).

⁵³⁴ *Baltimore City Pass. R. Co. v. Hambleton*, 77 Md. 341 (1883), and cases cited.

⁵³⁵ *Price v. Holcomb*, 89 Iowa, 123 (1893).

⁵³⁶ *Hafer v. New York, etc., R. Co.*, 14 Week. Law Bull. 68 (1885).

benefit is illegal, for a vote ought to be an impartial exercise of judgment.⁵³⁷ Thus a stockholder in a railroad company who, for taking part in the formation of a land company, is to receive a sum of money when a depot is located on the land, in effect sells his vote and the contract is improper. His judgment, so the court remarked, would not be disinterested.⁵³⁸ So is an agreement by the majority of the stockholders of a corporation that they will vote their stock in such a way at all elections of directors as to continue them in office, with the right of substitution, at specified salaries.⁵³⁹ So is an agreement by all stockholders for the sale of their stock and that designated persons shall be elected to offices in the corporation for a fixed period.⁵⁴⁰ Likewise a contract between two stockholders by which one of them for a consideration agrees to

⁵³⁷ *Elliott v. Richardson*, L. R. 5 C. P. 744 (1870).

⁵³⁸ *Fuller v. Dame*, 35 Mass. 472 (1836).

⁵³⁹ *Snow v. Church*, 13 N. Y. App. Div. 108 (1897).

⁵⁴⁰ *Kantzler v. Bensinger*, 214 Ill. (1905); *Faulds v. Yates*, 57 Ill. 416 (1870).

vote for a person as manager and a larger salary is void against public policy, unless all the stockholders assent to the conduct of such voter.⁵⁴¹

219. Oath of Ownership of Stock.—

Neither the stockholder nor his proxy can be compelled by law to take an oath that the stockholder is the owner of the stock.⁵⁴²

220. Regulations and Restrictions.—

A corporation may provide through by-law that "at stockholders' meetings each stockholder shall cast one vote for each share of stock owned by him, unless such a method of voting is in conflict with the charter or with some general law."⁵⁴³ Nevertheless restrictions may be legally imposed on the powers of the owners of stock to vote it. Thus the owner of preferred stock usually has no right to vote on it,⁵⁴⁴ nor has the

⁵⁴¹ *Woodruff v. Wentworth*, 133 Mass. 309 (1882); *Cone v. Russell*, 48 N. J. Eq. 208 (1891).

⁵⁴² *People v. Tibbits*, 4 Cow. 358 (1825); *People v. Kip*, 4 Cow. 382 (1822).

⁵⁴³ *Proctor Coal Co. v. Finley*, 98 Ky. 405 (1895).

⁵⁴⁴ *State v. Swanger*, 190 Mo. 561 (1905); *In re Barrow Haematite Steel Co.*, 39 Ch. Div. 582 (1888); *Miller v. Ratterman*, 47 Ohio St. 141 (1890).

owner of bonds.⁵⁴⁵ A corporation may go a long way in imposing restrictions whenever all the stockholders agree to them. Of course charters and statutes must be regarded. Thus, if stockholders have the legal right to subdivide their shares in such a way as they think fit for the purpose of increasing their votes at the annual meeting, the directors may be enjoined from fixing a particular date for the meeting that will prevent the stockholders from effecting their purpose.⁵⁴⁶ And whenever a corporation attaches proper conditions to a subscription relating to the exercise of the voting power, the subscriber is not entitled to vote until there has been a full compliance with the conditions.⁵⁴⁷

221. Suspension of Vote.—The right to vote on stock is suspended pending an appeal from a decision of the question who can vote thereon.⁵⁴⁸

⁵⁴⁵ *State v. Swanger*, 190 Mo. 561 (1905); *State v. McDaniel*, 22 Ohio St. 354 (1872).

⁵⁴⁶ *Cannon v. Trask*, L. R. 20 Eq. 669 (1875).

⁵⁴⁷ *Spitzel v. Chinese Corporation*, 80 L. T. Rep. 347 (1899).

⁵⁴⁸ *Durfee v. Harper*, 22 Mont. 354, 373 (1899).

Sect. 4. Corporations and Other Voters.

222. Stock Held by Corporation in Another Company.—If a corporation owns a majority of the stock of a rival company will a court, at the instance or petition of a minority stockholder of the latter company, enjoin the other company from voting its stock and thus obtaining control? The answer turns on the answer to another question, has a corporation the right to buy the stock of another rival company? Whenever it has the right to make such a purchase, it has the right to vote the stock purchased. The right to purchase the stock of rival companies, and in this way obtain control of them, of late years has been restricted by statute. This has been done to prevent the growth of monopolies. The action of courts has been diverse as well as legislatures.⁵⁴⁹

⁵⁴⁹ The courts that have sustained such action are: *Oelbermann v. New York & Northern R.*, 77 Hun, 332 (1891); *Theis v. Spokane Gas Light Co.*, 49 Wash. 477 (1908).

The courts that have opposed such action are more numerous: *Milbank v. New York, Lake*

Of course corporations have a wide authority to buy and hold stock in other companies for a limited period, which is taken in the way of securing indebtedness and escaping loss, a practice that is founded on solid reason; but the purchase of stock in a rival company, or primarily to prevent or destroy competition, is a very different question. It may be that in some cases it is difficult to prove the motive or object of purchasing, but this does not affect the principle.

223. Non-Resident Owner.—If one cannot hold stock in a corporation because he is a non-resident for example, he cannot vote it by transferring it to another for this purpose. If permitted to do this, the statute would be defeated.⁵⁵⁰ If the true

Erie & W. R. Co., 64 How. Pr. 20 (1882); *Memphis & Charleston R. Co. v. Woods*, 88 Ala. 630 (1899); *Am. Ref. & Construction Co. v. Linn*, 93 Ala. 610 (1890); *George v. Central R. & Bkg. Co.*, 101 Ga. 607 (1893); *Coler v. Tacoma, etc., Co.*, 65 N. J. Eq. 347, reversing 64 N. J. Eq. 117 (1913); *Clarke v. Central Railroad & Bkg. Co.*, 50 Fed. 338 (1892). See same case, 62 Fed. 328 (1894).

⁵⁵⁰ *State v. Hunton*, 28 Vt. 594 (1856).

owner wishes to vote his stock standing in another's name, he must have it transferred to him; and if the holder objects, the courts will compel the transfer to be made.⁵⁵¹

224. Trustee.—In New York a trustee is forbidden by statute from voting for himself as director of the trust estate.⁵⁵²

225 Joint Owners.—Whenever joint owners of stock disagree in voting, the vote should be rejected.⁵⁵³

226. Voting Stock Together.—It is not illegal for a stockholder to buy up a controlling interest in a corporation; nor is an agreement illegal to vote stock together. Nevertheless, a court may refuse to compel the performance of a contract for the sale of a controlling interest in a company, when the sole object of the purchaser is to secure control.⁵⁵⁴

⁵⁵¹ *Vowell v. Thomson*, 3 Cranch C. C. 428 (1829); *Hoppin v. Buffum*, 9 R. I. 513, 518 (1870).

⁵⁵² See *Application of Elias*, 17 N. Y. Misc. 718 (1896).

⁵⁵³ In *Matter of the Election of Pioneer Paper Co.*, 36 How. Pr. 105, 111 (1864); *Tunis v. Hestonville, etc.*, R., 1 Pa. Dist. 207, affirmed 149 Pa. 70 (1892).

⁵⁵⁴ *Gage v. Fisher*, 5 N. Dak. 297, 304 (1895).

227. One Cannot Complain Unless He Tried to Vote.—A stockholder may insist on his right to have his vote properly counted,⁵⁵⁵ yet before he can complain that his vote was not taken, he must show that he offered to vote, or that he presented his claim of right to vote, and that it was excluded.⁵⁵⁶

⁵⁵⁵ *Commonwealth v. Stevens*, 168 Pa. 582 (1895).

⁵⁵⁶ *State v. Chute*, 34 Minn. 135 (1885).

CHAPTER X.

Cumulative Voting.

228. A Personal Right.—The right to select directors or other officers by the cumulative plan is a personal right, which each must exercise for himself and cannot be taken away by resolution or by-law adopted by the majority of stockholders.⁵⁵⁷

229. To Whom it Applies.—The right to cumulate votes is not given generally, but only to the election of officers.⁵⁵⁸ "It could not apply to other matters, as the motion to adjourn for instance, where there is only one proposition, and nothing to cumulate upon."⁵⁵⁹ The right, therefore, does not apply to the election of

⁵⁵⁷ *Tomlin v. Farmers & Merchants' Bank*, 52 Mo. App. 430 (1893).

⁵⁵⁸ *Attorney General v. Vichie*, 138 Mich. 387 (1904).

⁵⁵⁹ *Bridgers v. Staton*, 150 N. C. 216 (1909).

managers of limited partnership associations,⁵⁶⁰ but does apply to the election of trustees of a state normal school.⁵⁶¹

230. Notice Need not be Given.—To exercise the right to cumulate votes, notice need not be given of one's intention to do so; the right to vote is not limited by any condition.⁵⁶²

231. Mode of Voting. Motive.—A stockholder may cast as many votes for each of the candidates for directors as he holds shares of stock, or he may distribute his votes on the cumulative plan. In any case his motive is not the subject of legal inquiry.⁵⁶³

232. How Validity of Election is Determined.—"When the votes under such a system are cast and counted, the validity of the election must be determined precisely as in all other cases. Whether the stockholders can cumulate again to fill the

⁵⁶⁰ *Attorney General v. Vichie*, 138 Mich. 387 (1904).

⁵⁶¹ *Commonwealth v. Yetter*, 190 Pa. 488 (1899).

⁵⁶² *Pierce v. Commonwealth*, 104 Pa. 150 (1883).

⁵⁶³ *Chicago Macaroni Mfg. Co. v. Boggiano*, 202 Ill. 312 (1903).

vacancies is a matter that must be determined when the case arises.”⁵⁶⁴

233. Effect of Agreement not to Cumulate.

—A stockholder who has votes enough in his own hands to elect himself and other directors by cumulating his shares in voting, but does not by reason of a verbal agreement among the stockholders that he should be chosen president, and, accordingly scatters his votes, expecting the agreement will be performed, cannot obtain any relief from the court from its non-performance. The court cannot do for him what he could have done himself, nor order a new election.⁵⁶⁵

234. What Teller may do with Unmarked Ballots.—Should the members of one faction, at a stockholders’ meeting for the election of directors, deliver their ballots to the teller without marking them cumulative, the teller may, before the ballots are canvassed or an election declared, return the ballots to the stockholders who cast them,

⁵⁶⁴ Paxson, J., *Wright v. Commonwealth*, 109 Pa. 560, 569 (1885).

⁵⁶⁵ *Cross v. West Va., etc., R.*, 35 W. Va. 174 (1891).

in order that they may be corrected to show a cumulation of votes, and thus express the true intention of the voters.⁵⁶⁶

235. Majority of Votes Cast Elects.—

In Ohio, in the election of directors, the cumulative voting of shares is authorized. One, therefore, who receives a majority of the votes so cast is elected a director, though he does not receive the votes of the holders of a majority of the shares. Said the court: "The requirement of a majority of shares must, in order that the clearly defined purpose of the legislature be not defeated, be regarded as applying only when the shares are voted without cumulating."⁵⁶⁷

236. Election of Only Part of Board.—

An election was held for seven directors of a private corporation at which the cumulative system of voting was employed. Only five directors received the necessary pluralities. They had, however, full power to act as a board even though the two

⁵⁶⁶ *Zierath Comb. Drill Co. v. Croake*, 21 Cal. App. 222 (1913).

⁵⁶⁷ *Schwartz v. State*, 61 Ohio St. 497 (1900).

remaining directors were not chosen. If the stockholders had not adjourned and had proceeded to another ballot that would have been proper. Or, if they had adjourned the election to a subsequent day, an election for two more directors on that day would have been valid.⁵⁶⁸

237. Second Election.—A corporation had five directors; at a meeting of the stockholders a motion was carried to elect seven. The majority voted for the seven, and the minority, cumulating their votes on four directors, elected them on the face of the teller's tabulation. Whereupon the chairman declared the election void, and the minority then withdrew taking the minutes and the ballot, the majority faction, who represented the majority of the stock, remained and reconsidered the action by which the seven directors had been elected and had another election. In this election four of the majority and three of the minority were elected directors. This election was sustained by the court.⁵⁶⁹

⁵⁶⁸ *Wright v. Commonwealth*, 109 Pa. 560 (1885); *Forsyth v. Brown*, 2 Pa. Dist. 765.

⁵⁶⁹ *State v. Ellison*, 90 S. E. 699 (S. C. 1916).

CHAPTER XI.

Voting Agreements.

238. History.—Voting agreements, now so common, have greatly perplexed the judicial mind. Resting on the principle that the voting power could not be separated from the ownership of stock, many of the earlier voting arrangements were condemned because they invaded this principle. The first definite exception clearly established was in the interest of creditors.⁵⁷⁰ Besides, this was only temporary, ceasing as soon as the demands of creditors were satisfied. The object of all these arrangements is to enable persons who hold a minority of the stock of a corporation to exercise the power which the law contemplates shall belong to the majority only. Of course, this minority will always insist

⁵⁷⁰ *Ecker v. Ky. Refining Co.*, 144 Ky. 264 (1911).

that it seeks the welfare of the corporation, or, still further, the interest of the whole community.⁵⁷¹

239. Leading Case.—One of the earlier cases was *Smith v. San Francisco & North Pacific Railroad Co.*⁵⁷² An agreement was made between three persons to purchase the stock of a railway, which should be voted by them for five years, and their vote should be determined by ballot between them. This agreement implied that the majority should determine how the shares should be voted, and that the majority had the authority to vote the other person by a proxy which could not be revoked. The court sustained its position by cogent reasoning, but the decision was a wide departure from the universal rule that the voting power could not be separated from the ownership of the stock, and was severely criticised.

240. Modern Rule.—Since the decision

⁵⁷¹ *Smith v. San Francisco & North Pacific R.*, 115 Cal. 584 (1897).

⁵⁷² 115 Cal. 584 (1897).

in the Smith case, many of the courts have shifted their ground. The Supreme Court of Illinois has well expressed the prevailing view: "There is nothing in the law to prevent the owners of a majority of the stock from giving proxies to the same. Unless restricted by its terms or some statutory provision, a proxy confers on the grantee a discretion, unlimited either in character or duration, until revoked. A majority of the stockholders may, therefore, by uniting in the same proxy, confer upon an agent unlimited discretion to vote their stock, and there is no policy of the law to prevent their transferring the stock to a trustee with the like unrestricted power. It is the purpose for which the trust was created which must determine its legality. Therefore, if the stock voting agreement or voting trust is for the general welfare of the corporation, and is not unfair to or a fraud on any of the stockholders, it is legal."⁵⁷³

⁵⁷³ *Venner v. Chicago City R. C.*, 258 Ill. 523 (1913); *Luthy v. Ream*, 190 Ill. App. 315 (1914); *Bowditch v. Jackson Co.*, 76 N. H. 351 (1912);

The rule, as declared by the Supreme Court of Illinois, is in harmony with the rule in many states. Thus, in New Jersey

Thompson-Starrett Co. v. E. B. Ellis Granite Co., 86 Vt. 282 (1912); *Carnegie Trust Co. v. Security Life Ins. Co.*, 11 Va. 1 (1910); *Brightman v. Bates*, 175 Mass. 105 (1899); *Williams v. Montgomery*, 148 N. Y. 519 (1896); *Smith v. San Francisco & North Pacific R.*, 115 Cal. 584 (1897); *Ohio & Miss. R. Co. v. State*, 49 Ohio St. 668 (1892); *Griffith v. Jewitt*, 15 Week. Law Bull. 419 (1886); *Weber v. Della Mt. Mining Co.*, 14 Idaho, 404 (1908); *Moses v. Scott*, 84 Ala. 608 (1888); *Mobile & Ohio R. Co. v. Nicholas*, 98 Ala. 92 (1892); *Brown v. Pacific Mail Steamship Co.*, 5 Blatchf. 525 (1867); *Hey v. Dolphin*, 92 Hun, 230 (1895); *Havemeyer v. Havemeyer*, 43 N. Y. Super. Ct. 506 (1878); *Gray v. Bloomington, etc., R.*, 120 Ill. App. 159 (1905); *Faulds v. Yates*, 57 Ill. 116 (1870); *Bonta v. Gridley*, 77 N. Y. App. Div. 33 (1902); *Winsor v. Commonwealth Coal Co.*, 63 Wash. 62 (1911); *Clark v. National Steel & Wire Co.*, 82 Conn. 178 (1909).

Stockholders may contract with other stockholders to place the control of their stock in their hands, authorizing them to vote it, collect dividends and do whatever was within the province of the owner with respect to it. If any stockholder may vote his stock by an agent or proxy, "why may not several stockholders or any number, agree

voting trusts are not declared to be necessarily unlawful; they may or may not be lawful, according to the circumstances of the case. The general rule is that *prima facie* they are unlawful, but may be rendered lawful by the circumstances.⁵⁷⁴

Some of the states, however, still adhere to the old rule that the voting power cannot be separated from the ownership of the stock.⁵⁷⁵ Chancellor Walker of the New Jersey⁵⁷⁶ Court of Chancery recently quoted with approval the deliverance of a vice-chancellor of the same court⁵⁷⁷ who said: "I am of the opinion that it is unlawful, and a gross violation of the public policy of this state, to permit or contract for a separation of the voting power of corporate stock from its ownership."

for a consideration to permit other persons to vote the stock in their stead."—*White v. Snell*, 35 Utah, 434 (1909).

⁵⁷⁴ *Warren v. Pim*, 65 N. J. Eq. 36, 53 (1903).

⁵⁷⁵ *Harvey v. Linville Improvement Co.*, 118 N. C. 693 (1896).

⁵⁷⁶ *Thomas Maddock Sons' Co. v. Biardot*, 81 N. J. Eq. 233, 236 (1913).

⁵⁷⁷ Vice Chancellor Howell, *Bache v. Central Leather Co.*, 78 N. J. Eq. 484, 486 (1911).

241. Voting Power Cannot be Separated from Ownership without Good Reason.—

The separation of the voting power from the ownership cannot be done without a substantial reason. "To justify such a separation," says the Supreme Court of Pennsylvania, "there must be a property interest to conserve, some definite policy in the interest of the corporation to be carried out, some beneficial interest of the stockholders to be served or some purpose not unlawful of an advantageous character to the stockholders to be effectuated."⁵⁷⁸

On the other hand, an agreement "is invalid" whose object is not the benefit of all the stockholders equally but is some unfair advantage to the parties to it only, as where one of the parties is to have a certain office at a certain salary, or the stock of the corporation is to be voted, or its affairs managed, by the determination of persons other than its stockholders or by a minority of its own stockholders."⁵⁷⁹

⁵⁷⁸ *Boyer v. Nesbitt*, 227 Pa. 398 (1910).

⁵⁷⁹ *Venner v. Chicago City R. Co.*, 258 Ill. 523, 540 (1913); citing *Guernsey v. Cook*, 120 Mass. 501

In *Warren v. Pim*,⁵⁸⁰ in which there was a very elaborate discussion of the subject of voting trusts, Judge Green said: "I think it is but an outgrowth of this principle of share equality that in the decisions of our courts, whether upholding or overturning a particular voting trust, it has been plainly held that the validity of such a trust is subject to at least two limitations, to wit: (a) that the holders of all of the shares of the corporation shall have an equal privilege (after fair information) of availing themselves of the trust agreement

(1876); *Shepaug Voting Trust Cases*, 60 Conn. 553 (1890); *Kreissl v. Distillery Co. of America*, 61 N. J. Eq. 50 (1900); *Cone v. Russell*, 48 N. J. Eq. 208 (1891); *White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq. 178 (1893); *Morel v. Hoge*, 130 Ga. 625 (1908); *Hafer v. N. Y., Lake Erie & Western R. Co.*, 14 Week. Law Bull. 68 (1886); *Palmbaum v. Magulsky*, 217 Mass. 306 (1914); *Dieckmann v. Robyn*, 162 Mo. App. 67 (1911); *Bache v. Central Leather Co.*, 78 N. J. Eq. 484 (1911); *Teich v. Kaufman*, 174 Ill. App. 306 (1912); *Luthy v. Ream*, 190 Ill. App. 315 (1914); *Woodruff v. Wentworth*, 133 Mass. 309 (1882).

⁵⁸⁰ 66 N. J. Eq. 353 (1903).

if they shall so choose; and (b) that the object and aim of the trust shall be the equal benefit of all the shares."

A voting agreement, therefore, by which one of the parties thereto is to receive an office in the corporation, or the arrangement is made for the sole benefit of the parties to the agreement, and not for the welfare of the corporation and of all its stockholders, is invalid.⁵⁸¹

242. Agreement with Purchaser of Stock.

—An agreement by a vendor of stock, which is to be delivered after an election, that he will vote as the vendor desires is legal.⁵⁸² Likewise an agreement containing

⁵⁸¹ Shepaug Voting Trust Cases, 60 Conn. 579 (1890); *Guernsey v. Cook*, 120 Mass. 501 (1876); *Woodruff v. Wentworth*, 133 Mass. 309 (1882); *Cone v. Russell*, 48 N. J. Eq. 208 (1891); *Robotham v. Prudential Insurance Co.*, 64 N. J. Eq. 673 (1903); *Fennessy v. Ross*, 5 N. Y. App. Div. 342 (1895); *Gage v. Fisher*, 5 N. Dak. 297 (1895); *Withers v. Edmonds*, 26 Tex. Civ. App. 189 (1901); *West v. Camden*, 135 U. S. 50 (1890); *Noel v. Drake*, 28 Kan. 265 (1882); 2 Cook on Corporations, § 622.

⁵⁸² *Mobley v. Morgan*, 6 At. 694 (Pa. 1886).

a power of sale with an incidental provision for voting is not a voting trust and is valid.⁵⁸³

A common agreement is that the purchaser shall vote to retain certain persons in the directory, or other offices, usually for a definite time. These agreements have sometimes been sustained,⁵⁸⁴ but not always.⁵⁸⁵ Unanimous agreements, however, of this nature made by the stock-

⁵⁸³ *Hall v. Merrill Trust Co.*, 106 Me. 465 (1910).

⁵⁸⁴ *Smith v. San Francisco & North Pacific R. Co.*, 115 Cal. 584 (1897); *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357 (1898); *Lloyd v. Dickson*, 116 La. 90 (1906); *Proctor Coal Co. v. Finley*, 98 Ky. 405 (1895); *Barnes v. Brown*, 80 N. Y. 527 (1880); *Kantzler v. Benzinger*, 214 Ill. 589 (1905); *Greenwell v. Porter*, 1 Ch. Div. 530 (1902); *Colonist, etc., Co. v. Dunsmuir*, 32 Canada S. C. Rep. 679 (1902); *Bonta v. Gridley*, 77 N. Y. App. Div. 33 (1902).

⁵⁸⁵ *Morel v. Hoge*, 130 Ga. 625 (1908); *Withers v. Edmonds*, 26 Tex. Civ. App. 189 (1901); *West v. Camden*, 135 U. S. 507 (1890); *Gage v. Fisher*, 5 N. Dak. 297 (1895); *Woodruff v. Wentworth*, 133 Mass. 309 (1882); *Wilbur v. Stoepel*, 82 Mich. 344 (1890); *Cone v. Russell*, 48 N. J. Eq. 208 (1891).

holders have received the sanction of the courts.⁵⁸⁶

243. Majority Owners may Agree to Vote the Same Way.—Those owning a majority of the stock have a right to combine and control the election of the board of directors.⁵⁸⁷ A majority of the stockholders may also elect themselves directors and control the corporation.⁵⁸⁸

⁵⁸⁶ *Borland v. Prindle, etc., Co.*, 144 Fed. 713 (1906). See *Wilbur v. Stoepel*, 82 Mich. 344 (1890).

⁵⁸⁷ *Faulds v. Yates*, 57 Ill. 416 (1870); *Weber v. Della Mt. Mining Co.*, 14 Idaho, 404 (1908); *Beitman v. Steiner*, 98 Ala. 241 (1893); *People v. Albany & Susquehanna R.*, 55 Barb. 344 (1869), affirmed 57 N. Y. 161; *Havemeyer v. Havemeyer*, 43 N. Y. Super. Ct. 506, 513 (1878).

⁵⁸⁸ *White v. Snell*, 35 Utah, 434 (1909).

CHAPTER XII.

Elections.

244. What is an Election?—"This word is now generally used as indicating the expression of choice by vote regardless of whether the choice to be made is as to the selection of an officer or the adoption of a proposition."⁵⁸⁹ "Corporate elections are business affairs, not controlled by the laws affecting general elections, and should be conducted in a business way and in a manner affording all stockholders the fullest liberty in expressing their wishes, disregarding technical matters which enter into general elections controlled and restricted by special statutes."⁵⁹⁰

245. Usage in Elections.—If a charter

⁵⁸⁹ *McKee v. Home Sav. & Trust Co.*, 122 Iowa, 731, 734 (1904).

⁵⁹⁰ *Zierath Comb. Drill Co. v. Croake*, 21 Cal. App. 222 (1913).

describes no mode of conducting an election of trustees, and no by-laws regulating their election have been adopted, former usage and practice will be followed.⁵⁹¹

246. Agreement to Elect.—An agreement that directors shall be elected by a different vote than that prescribed by the statute, which declares a plurality of votes to be sufficient, is invalid.⁵⁹²

247. Closing Books.—A corporation may, in accordance with a by-law or resolution of the board of directors, close its books for a reasonable time before an election in order to prepare a list of the stockholders who are entitled to vote.⁵⁹³ But as a statutory requirement, that a list of stockholders who are entitled to vote, with the number of shares held by them, shall be made out ten days prior to the election of directors, is only directory, non-compliance therewith does not vitiate the election.⁵⁹⁴

⁵⁹¹ Seventh-Day Baptists, 4 York, 29 (1883).

⁵⁹² *Reiss v. Levy*, 161 N. Y. Supp. 1048 (1916).

⁵⁹³ 2 Cook on Corporations, § 611; *In re Pantan v. Cramp Steel Co.*, 9 Ont. Law Rep. 3 (1904).

⁵⁹⁴ *Downing v. Potts*, 23 N. J. Law, 66 (1851).

248. Election by Majority.—If a corporation has a fixed capital stock divided into a definite number of shares, a majority of all the shares is necessary to a valid election, unless there be some rule established by charter or statute, to the contrary.⁵⁹⁵ But if the majority is composed by the votes of persons holding stock which the corporation had no authority to issue, it is not legal, and no election has been effected.⁵⁹⁶ A majority of the stockholders may elect themselves directors and control the corporation.⁵⁹⁷

If a statute provides that a corporation may be dissolved with the assent of three-quarters of the stock represented at the meeting, and the articles of incorporation provide that it may be dissolved with the assent of two-thirds of the capital stock represented at a general meeting, the election of liquidators chosen by all the stockholders present at a meeting is valid,

⁵⁹⁵ *Haskell v. Read*, 68 Neb. 107 (1903).

⁵⁹⁶ *Cooke v. Marshall*, 196 Pa. 200 (1900).

⁵⁹⁷ *White v. Snell*, 35 Utah, 434 (1909).

even if they were not chosen by three-quarters of the entire stock.⁵⁹⁸

249. Election by Minority.—"The principle which runs through all [the cases] and is founded on common sense as well as supported by authority, is that a majority of the legal voters who choose to vote always constitute an election. It has been holden that when a majority expressly dissent, but do not vote, the election by the minority is good."⁵⁹⁹

250. Issue of New Stock.—If new shares are issued the directors must give all stockholders a fair opportunity to subscribe for their due proportion of them, before they can be sold or allotted to others. To sell them to the friends of the directors, and especially at less than a fair price to enable them to control the election, is a fraud, and the holders of such stock may be restrained from voting it, and also the directors from receiving the votes if

⁵⁹⁸ *Dreifus v. Colonial Bank & Trust Co.*, 123 La. 61 (1909).

⁵⁹⁹ *First Parish of Roxbury v. Stearns*, 138 Mass. 148 (1838).

they have been cast.⁶⁰⁰ Still stronger is the case against directors who issue new stock on the verge of an election and for the sole purpose of carrying it, and especially when they represent and own only a minority of the stock.⁶⁰¹

If stock has been issued more than a year without any action to test its validity, the court will restrain directors who seek to gain control at an approaching election by having declared void the stock thus issued.⁶⁰²

251. Meaning of "Number" of Directors to be Elected.—A code providing that "the number of directors may, by a majority of the stockholders of the corporation, be increased or diminished to any number not less than three," means a majority in interest of the stockholders, and not a majority in number only.⁶⁰³

252. Election of Directors.—The failure

⁶⁰⁰ *Way v. American Glucose Co.*, 60 N. J. Eq. 263 (1900).

⁶⁰¹ *Fraser v. Whalley*, 2 Hem. & M. 10 (1864).

⁶⁰² *Hall v. Lay*, 27 N. Y. Misc. 602 (1899).

⁶⁰³ *Bank of Los Banos v. Jordan*, 167 Cal. 327 (1914).

to choose a full board of directors, because of a tie vote on some of the candidates, will not vitiate the election of those who received a clear plurality of the votes cast. The vacancies thus caused may be filled at a future meeting on due notice.⁶⁰⁴

253. Filling Vacancies in Board.—When vacancies in the board occur, charter or statute usually provides how they shall be filled. Ordinarily directors can fill a vacancy, but can they do so when their number has been reduced below a quorum? It has been held that they cannot, and if they do so, stockholders cannot, at a special meeting, ratify their action.⁶⁰⁵ It has also been held that when directors have been reduced by death below the minimum number prescribed by charter, and there is a provision therein, or in the

⁶⁰⁴ *Commonwealth v. Parrish*, 3 Kulp (Pa.), 220 (1885).

⁶⁰⁵ *Moses v. Tompkins*, 84 Ala. 613, 619 (1888); *People v. Albany & Susquehanna R. Co.*, 55 Barb. 344 (1869); *State v. Smith*, 48 Vt. 266 (1876). See *Matter of Union Ins. Co.*, 22 Wend. 591 (1840).

by-laws, for filling the vacancies, the stockholders may fill them.⁶⁰⁶

254. Creating Vacancies.—Again, when the election of directors is legal, the adoption at a subsequent stockholders' meeting of a resolution undertaking to create vacancies by resolving that the previous election was illegal, is ineffectual.⁶⁰⁷

255. Purchase and Use of Stock by Directors.—"Corporate directors cannot manipulate the property of which they have control in a trust relation, primarily with the intent to secure a majority of the stock or of directors in any particular interest. This is not a fair exercise in good faith of the power with which they are clothed. This is especially true when they issue stock for the express purpose of retaining in power the very persons who authorize the issue, and who are therefore distinctly benefited to the disadvantage of another and substantial part of their stock-

⁶⁰⁶ *Sylvania & Girard R. Co. v. Hoge*, 129 Ga. 734 (1907).

⁶⁰⁷ *Clark v. Wild*, 85 Vt. 212 (1911).

holders."⁶⁰⁸ And where they do issue stock primarily to carry an election, a court may set aside the issue and also the election.⁶⁰⁹

Likewise should the officers and directors of a corporation, which has acquired some of its own stock by the purchase of all the stock of another corporation owning it, attempt to vote on the shares thus acquired for the purpose of electing directors, they may be enjoined at the instance of a stockholder.⁶¹⁰

256. Election of Ineligible Officer.—If a director who has been declared elected is ineligible, the one who obtained the next

⁶⁰⁸ *Elliott v. Baker*, 194 Mass. 518 (1907); *Trask v. Chase*, 107 Me. 137 (1910); *Luther v. C. J. Luther Co.*, 118 Wis. 112 (1903); *Essex v. Essex*, 141 Mich. 200 (1905); *Way v. American Glucose Co.*, 60 N. J. Eq. 263 (1900); *Goodin v. Cincinnati & W. Canal Co.*, 118 Ohio St. 169 (1868); *Farmers' Loan & Trust Co. v. New York & Northern R. Co.*, 150 N. Y. 410 (1896); *Punt v. Symons Corporation*, 2 Ch. Div. 506 (1903).

⁶⁰⁹ *Luther v. C. J. Luther Co.*, 118 Wis. 112 (1903).

⁶¹⁰ *O'Connor v. International Silver Co.*, 68 N. J. Eq. 67 (1904).

largest number of votes is not entitled to his seat⁶¹¹ unless the electors knew or had reason to believe, that the candidate for whom they voted was ineligible.⁶¹² Should they vote for him, knowing of his ineligibility, "they must be considered as throwing away their votes, and the eligible candidate receiving the highest number of votes is elected."⁶¹³

257. Inquiry into the Validity of an Election.—A court may inquire into the validity of an election⁶¹⁴ and pass on the title to corporate officers when necessary to do complete justice in a suit of which it has jurisdiction on other grounds.⁶¹⁵

⁶¹¹ *In re* St. Lawrence Steamboat Co., 44 N. J. Law, 529 (1882); *Jordy v. Hebrard*, 18 La. 455. See also *Regina v. Tewksbury*, L. R. 3 Q. B. 628; *Drinkwater v. Deakin*, L. R. 9 C. P. 626; *Etherington v. Wilson*, L. R. 20 Eq. 606.

⁶¹² *In re* St. Lawrence Steamboat Co., 44 N. J. Law, 529 (1882); *Schmidt v. Mitchell*, 101 Ky. 572 (1897).

⁶¹³ Justice Du Relle in the *Schmidt* case. In the *Jordy* case, cited above, the court held that a new election must take place.

⁶¹⁴ *Schmidt v. Pritchard*, 135 Iowa, 240 (1907).

⁶¹⁵ *Haskell v. Read*, 68 Neb. 107 (1903), citing many cases.

For what reasons may an election be set aside? Acts done by some of the stockholders which bear the appearance of a trick, secrecy, or fraud, may invalidate an election.⁶¹⁶ The improper rejection of votes is a frequent ground for setting aside an election, and ordering the admission of those who would have been elected had the rejected votes been received.⁶¹⁷

An inquiry will not be made into an election on the ground that illegal votes were cast unless the votes were challenged at the time of casting them.⁶¹⁸ A stockholder, therefore, who was present and had the means of knowing that a proposed

⁶¹⁶ *People v. Albany & Susquehanna R. Co.*, 55 Barb. 344 (1869).

⁶¹⁷ *In re Cape May & Del. Bay Nav. Co.*, 16 At. Rep. 191 (1888); *In re St. Lawrence Steamboat Co.*, 44 N. J. Law, 529, 536 (1882).

⁶¹⁸ *Matter of Chenango Co. Mutual Ins. Co.*, 19 Wend. 635 (1839); *Matter of Long Island R. Co.*, 19 Wend. 37, 44 (1837); *Matter of Argus Co.*, 138 N. Y. 557 (1893); *Schoharie Valley R. Case*, 12 Abb. Pr. (N. S.) 394 (1872); *State v. Lehre*, 7 Rich. Law (S. C.), 234 (1854); *People v. Robinson*, 64 Cal. 373 (1883).

vote was improper, and did not challenge it, cannot afterwards complain.⁶¹⁹

Likewise a stockholder who, knowing the objection to the legality of certain votes, attends the meeting at which the votes are decided to be legal, acquiesces in the decision of the canvassers, and votes at the election, cannot afterward question the title to the officers elected on the ground of illegality.⁶²⁰

If the directors declared elected are ineligible because they did not produce the stock books at the election, the court will not always declare elected those who received a minority of the votes, but will order a new election if there was no improper motive in disregarding the statute.⁶²¹

258. When Election will not be Set Aside.

—An election will not be set aside if, after throwing out the invalid votes, the officers declared elected would still have a valid

⁶¹⁹ *In re United Towns Building & Loan Association*, 79 N. J. Law, 31, 33 (1909).

⁶²⁰ *State v. Lehre*, 7 Rich. Law (S. C.), 234, 325 (1854).

⁶²¹ *Stratford v. Mallory*, 70 N. J. Law, 294 (1904).

majority of the votes cast.⁶²² Nor will a new election be ordered if, after rejecting all the invalid votes and admitting the rejected ones, the directors declared elected had a majority of the votes.⁶²³

259. Mode of Application to Set Aside an Election.—Only the party aggrieved in the notice of application to set aside the election is entitled to be heard; a notice, therefore, given by one as attorney for A. B. and others is effective only for A. B.⁶²⁴ The applicant must also show that he has been injured by the declared result, that had the illegally excluded votes been offered,

⁶²² *People v. Tuthill*, 31 N. Y. 550 (1864); *Ex parte Murphy*, 7 Cow. 153 (1827); *Ex parte Desdoity*, 1 Wend. 98 (1828); *First Parish of Roxbury v. Stearns*, 38 Mass. 148 (1838); *Wardens of Christ Church v. Pope*, 74 Mass. 140 (1857); *Kimball v. New England Co.*, 69 N. H. 485 (1899); *Conant v. Millaudon*, 5 La. Ann. 542 (1850); *Craig v. First Pres. Church*, 88 Pa. 426 (1878); *In Matter of St. Lawrence Steamboat Co.*, 44 N. J. Law, 529 (1882).

⁶²³ *McNeeley v. Woodruff*, 13 N. J. Law, 352 (1833); *Ex parte Desdoity*, 1 Wend. 98 (1828).

⁶²⁴ *In Matter of Election of Directors of the Mohawk & Hudson R. Co.*, 19 Wend. 135 (1838).

or the illegally received votes been excluded, the result of the election would have been different.⁶²⁵

260. Effect of Slow Legal Proceedings.—

Suppose, after proceedings have been begun to set aside an election, the courts have moved so slowly that before they have determined matters, the time has expired for the directors or trustees to serve who should have served, what shall be done? The pleadings should be amended as far as necessary to enable those who can, of the properly chosen board, to qualify and serve if all cannot do so. In other words, the courts will do whatever they can to render justice in such cases.⁶²⁶

261. Election Cannot be Attacked Collaterally.—If directors are irregularly chosen,

⁶²⁵ Matter of Annual Election of Empire State Sup. Lodge, 53 N. Y. Misc. 344 (1907); *Ex parte* Murphy, 7 Cow. 153 (1827); *People v. Thornton*, 25 Hun, 456 (1881); Matter of Long Island R. Co., 19 Wend. 37 (1837); Matter of Argus Co., 138 N. Y. 557 (1893); *Waterbury v. Merchants Union Ex. Co.*, 50 Barb. 157 (1867).

⁶²⁶ *Pope v. Whitridge*, 110 Md. 468 (1909).

the legality of their election cannot be brought collaterally in question, but only in proceedings for the express purpose of deciding the matter.⁶²⁷ This is the general rule. Yet there is a tendency to disregard it, for on several occasions the titles of directors to their offices have been tried in collateral proceedings.

262. Election by Receiver.—A receiver may be appointed by the court to hold an election when such a course would be manifestly for the interests of all the stockholders. Thus, if the property of a corporation is held by fraudulent possession, a receiver may be appointed who may conduct the election of officers for its future management.⁶²⁸ A court may direct a receiver holding stock as an asset to vote thereon at an election.⁶²⁹

⁶²⁷ *Hughes v. Parker*, 20 N. H. 58 (1849); *Jones v. Bonanza Min. & Mill Co.*, 32 Utah, 440 (1907); 2 Cook on Corporations, § 713.

⁶²⁸ *King v. Barnes*, 51 Hun, 550 (1889), affirmed 113 N. Y. 655.

⁶²⁹ *American Investment Co. v. Yost*, 25 Abb. N. C. 274 (1890).

263. When Court can Hold an Election.

—Sometimes it is needful for a meeting of the stockholders to be held by order of the court under the direction of one of its officers. Thus the directors of a corporation, in order to maintain control, intentionally refused to give notice of the annual meeting and changed the by-laws to enable them to carry out their purpose more effectually. They also obtained an injunction from holding the meeting or any substitute. The stockholders who were opposed to these proceedings filed a bill praying for the holding of a meeting on due notice, to be conducted by a master in chancery. The court, finding that a fair meeting could not be held by the directors, appointed a master in chancery to hold the meeting.⁶³⁰

Indeed, a court is justified in holding an election whenever it cannot be justly and fairly held by the stockholders, and, unless it is controlled by the court, disorder and violence will occur.⁶³¹ These facts must be

⁶³⁰ *Bartlett v. Gates*, 118 Fed. 6 (1902).

⁶³¹ *Deal v. Erie Coal & Coke Co.*, 246 Pa. 552

established in a proper proceeding, usually a bill in equity praying for an injunction against holding the meeting in the ordinary manner, and that it be held under the order of the court. The meeting is conducted by a master who is the court's officer.⁶³² If an election is held by a minority who were not served with the injunction, in defiance of the court, it is void.⁶³³

Lastly, if trustees cannot agree on the way of voting the stock entrusted to them, the courts may direct them.⁶³⁴ In Illinois, however, the courts do not possess such authority, but if a trustee does not vote, he may be removed.⁶³⁵

264. Election without Notice.—If a corporation is restrained by law from holding

(1914); *Tunis v. Hestonville, etc., R.*, 149 Pa. 70 (1892); *Commonwealth v. Phila. & Reading R. Co.*, 3 Pa. Dist. 115 (1893). See *Bache v. Central Leather Co.*, 78 N. J. Eq. 484 (1911).

⁶³² *Ibid.*

⁶³³ *Ibid.*

³⁴ *Wanneker v. Hitchcock*, 38 Fed. 383 (1889).

⁶³⁵ *Mannhardt v. Ill. Staats Zeitung Co.*, 90 Ill. App. 315 (1899).

an annual meeting at the hour and day fixed by charter, and a small number of the stockholders, without the knowledge of the others, meet, organize and adjourn until the next day, at which time they hold an election without notice to the others who could have been easily notified, the election is unfair and invalid.⁶³⁶

⁶³⁶ State *v.* Bonnell, 35 Ohio St. 10 (1878).

CHAPTER XIII.

By-Laws.

265. Cannot Repeal a Statute.—Throughout this work we have treated of by-laws, and it has been remarked that a by-law which is contrary to charter or statute cannot be adopted; and any attempt to alter or abridge either in this manner is futile.⁶³⁷ Thus, if a charter provides that the annual meetings for the election of directors shall be held by the stockholders, the directors cannot by a by-law so change the time of holding the annual election as will continue themselves in office more than a year against the wishes of the holders of a majority of the stock.⁶³⁸ Likewise, a by-law which requires four-fifths of the stock of a company to be represented in

⁶³⁷ *Darrin v. Hoff*, 99 Md. 491, 500 (1904).

⁶³⁸ *Elkins v. Camden & Atlantic R. Co.*, 36 N. J. Eq. 467 (1883).

order to constitute a quorum, must be subordinated to the statute providing for the annual election of directors.⁶³⁹ A by-law cannot be used to defeat the plain intent of the legislature.

In the way of another example, a corporation may adopt a by-law providing that more than a majority of the stock issued and outstanding shall be necessary to constitute a quorum for the general transaction of corporate business. But it cannot be used for the purpose of overcoming a statute prescribing the mode and details of holding an annual election.⁶⁴⁰

Again, a court may determine whether a by-law is inconsistent with the statute prescribing how an annual election shall be held, and that at such election a majority of the stock shall constitute a quorum.⁶⁴¹

266. Who can Make By-Laws?—When neither charter nor statute confers on the directors the power to enact by-laws, it

⁶³⁹ *Lutz v. Webster*, 249 Pa. 226 (1915).

⁶⁴⁰ *Lutz v. Webster*, 249 Pa. 226 (1915).

⁶⁴¹ *Ibid.*

can be exercised only by the stockholders at a meeting.⁶⁴² Should the directors attempt to enact them without proper authority they would be void.⁶⁴³

267. Ratification—By-laws that have been informally adopted may be subsequently ratified. And this may be proved by the usage and acts of the corporation.⁶⁴⁴

268. Provisions of By-Laws.—A by-law which provides for an annual meeting of a corporation to choose its officers does not restrict the business that may be transacted at the meeting to their election.⁶⁴⁵ Nor can the act under which a corporation is organized and defining the qualifications of its members to vote for its officers, be further qualified by by-law.⁶⁴⁶ And a

⁶⁴² *Morton Gravel Road Co. v. Wysong*, 51 Ind. 12 (1875); *Hughes v. Wis. Odd Fellows' Mut. Lif. Ins. Co.*, 98 Wis. 292 (1898).

⁶⁴³ *Carroll v. Mullanphy Sav. Bank*, 8 Mo. App. 253 (1880).

⁶⁴⁴ *Lockwood v. Mechanics' Nat. Bank*, 9 R. I. 335 (1869); *Perkin v. Cutlers' Co.*, 2 Sel. N. P. (13th ed.) 1183 (1765).

⁶⁴⁵ *Warner v. Mower*, 11 Vt. 392 (1839).

⁶⁴⁶ *People v. Phillips*, 1 Denio (N. Y.), 398 (1845).

by-law providing and authorizing any stockholder to challenge votes, and endowing the inspector to require the person whose vote is challenged to make answer under oath concerning the matters set up in the challenge, or lose his vote, is void.⁶⁴⁷ But it is proper to provide by by-law that the president of a corporation shall appoint inspectors of election, and that ballots on which are written anything except the names of candidates shall not be counted.⁶⁴⁸ Furthermore, should a by-law require a majority of the stock to be represented at a stockholders' meeting before any business can be transacted, a meeting containing less than a majority representation cannot elect officers.⁶⁴⁹

269. Amendments.—The by-law of a society requiring a two-thirds vote of the members present to alter or amend its

⁶⁴⁷ *People v. Kip*, 4 Cow. (N. Y.) 382 (1822).

⁶⁴⁸ *Commonwealth v. Woelper*, 3 Serg. & Rawle (Pa.), 31 (1817).

⁶⁴⁹ *Ellsworth Woolen Mfg. Co. v. Faunce*, 79 Me. 440 (1887). But see *Castner v. Twitchell-Champlin Co.*, 91 Me. 524 (1898).

laws is inoperative and may be repealed by a majority vote at any regular meeting. The court in establishing this rule said: "The power of the society, derived from its charter and the laws under which it was organized to enact by-laws is continuous, residing in all regular meetings of the society so long as it exists. Any meeting could, by a majority vote, modify or repeal the law of a previous meeting, and no meeting could bind a subsequent one by irrepealable acts or rules of procedure. The power to enact is a power to repeal; and a by-law, requiring a two-thirds vote of members present to alter or amend the laws of the society, may itself be altered, amended or repealed by the same power which enacted it."⁶⁵⁰

Should a by-law provide that the company's charter can be amended only at a regular meeting, the notice of which shall specify the proposed action, a by-law can

⁶⁵⁰ Richardson v. Union Cong. Society, 58 N. H. 187, 189 (1877); Commonwealth v. Mayor of Lancaster, 5 Watts (Pa.), 152, 155 (1836); Wardens of Christ Church v. Pope, 74 Mass. 140, 142 (1857).

be amended in no other way. No usage or custom will set aside this positive requirement.⁶⁵¹ Should a by-law provide that the company's charter "may be amended by a vote of two-thirds at any regular or special meeting of the company," a majority of those present, though a minority of the stockholders, may amend the charter.⁶⁵² This may seem doubtful law until the well known common law rule is recalled, "that such of the shareholders as actually assemble at a properly convened meeting, although a minority of the whole number and representing only a minority of the stock, constitute a quorum for the transaction of business and may express the corporate will, and the body will be bound by their acts."⁶⁵³ Of course this rule may be changed by a statutory requirement.

⁶⁵¹ *Mutual Fire Ins. Co. v. Farquhar*, 86 Md. 668 (1898).

⁶⁵² *Green v. Felton*, 42 Ind. App. 675, 585 (1908).

⁶⁵³ *Ibid.*, citing *Morrill v. Little Falls Mfg. Co.*, 53 Minn. 371 (1893); *Everett v. Smith*, 22 Minn. 53 (1875); *Field v. Field*, 9 Wend. 395 (1832); *Brown v. Pacific Mail Steamship Co.*, 5 Blatchf. 525 (1867).

270. When Amendments do not Affect Members.—Whenever the by-laws provide how they may be amended, a member is not affected by a change made in any other way.⁶⁵⁴ Therefore if a by-law requires notice to members of amendments, they are not bound by action taken under an amendment of which they have had no notice.⁶⁵⁵

271. By-Law Shortening Term of Office.
—Can a by-law be passed affecting the term of office of a director, especially in the way of shortening it? Thus a corporation at a special meeting called for that purpose amended its by-laws, increasing the number of directors, altering the date of the annual meeting, and at the same special meeting elected the additional number of directors. It may be questioned whether those previously elected for one year could have

⁶⁵⁴ *Corley v. Travelers' Protective Association*, 105 Fed. 854 (1900); *Mutual A. & I. Society v. Monti*, 59 N. J. Law, 341 (1896).

⁶⁵⁵ *Metropolitan Safety Fund, etc., Association v. Windover*, 137 Ill. 417 (1891); *Northwestern Life, etc., Co. v. Erlenkoetter*, 90 Ill. App. 99 (1900).

had their term shortened in this manner.⁶⁵⁶ The question is one of statutory construction. But ministerial officers of a corporation, who are not holding for fixed terms by a statute or charter, may be removed by the body that chose them, for proper cause, unless prevented by an agreement with them.⁶⁵⁷

272. When Usage has Force of By-Law.—

A custom or usage long continued and invariably pursued has the force of a by-law if not repugnant to charter or statute.⁶⁵⁸ Like a by-law it may be annulled or altered by the mode and in the manner proper to be taken by the corporation for that purpose, or it will be held by the courts to be

⁶⁵⁶ *Gold Bluff Min. & Lumber Co. v. Whitlock*, 75 Conn. 669 (1903).

⁶⁵⁷ *In re Griffing Iron Co.*, 63 N. J. Law, 168 (1898).

⁶⁵⁸ *Mutual Fire Ins. Co. v. Farquhar*, 86 Md. 668, 673 (1898), citing *Miller v. Eschbach*, 43 Md. 1, 7 (1875); *Sampson v. Bowdoinham Steam Mill Corporation*, 36 Me. 78 (1853); *Atlantic Fire Ins. Co. v. Sanders*, 36 N. H. 252 (1858); *State v. Conklin*, 34 Wis. 21 (1874); *Warner v. Mower*, 11 Vt. 385 (1839).

inoperative if in conflict with the charter of the corporation.⁶⁵⁹

273. Directors cannot Juggle with By-Laws.—Directors cannot extend their term of office by juggling with the by-laws. Thus, if a charter provides that the annual meetings for the election of directors shall be held by the stockholders, the directors cannot by a by-law so change the time of holding the annual election that they will continue themselves in office more than a year against the wishes of the holders of the majority of the stock.⁶⁶⁰ Again, a body of trustees cannot by a by-law extend their own term for three months beyond the period for which they were originally elected.⁶⁶¹

274. By-Law cannot be Superseded by Resolution.—A by-law cannot be superseded by a resolution. Thus, if a statute calls for stock to be paid in accordance with by-laws, a call can be made in no

⁶⁵⁹ *Miller v. Eschbach*, 43 Md. 1, 6 (1875).

⁶⁶⁰ *Elkins v. Camden & Atlantic R. Co.*, 36 N. J. Eq. 467 (1883).

⁶⁶¹ *State v. McCullough*, 3 Nev. 202 (1867).

other manner.⁶⁶² Hence a call made by a resolution of the board of directors cannot take the place of a by-law and is therefore invalid.⁶⁶³

275. By-Law Providing for Majority Vote.

—When a by-law properly adopted by the stockholders provides that a majority vote at a stockholders' meeting shall be binding on the corporation, every stockholder will be bound by all acts and proceedings within the scope of the power and authority conferred by the charter, which shall be approved or sanctioned by the vote of a majority of the stockholders duly taken and ascertained according to law.⁶⁶⁴

276. Notice of Change.—The requirement is general that a by-law cannot be changed without due notice, and if this is not regarded, the amendment or alteration, whatever its nature may be, is invalid. Thus the directors of a company passed a

⁶⁶² *Darrin v. Hoff*, 99 Md. 491, 500 (1904).

⁶⁶³ *North Milwaukee Town Site Co. v. Bishop*, 103 Wis. 492 (1899).

⁶⁶⁴ *U. S. Steel Corporation v. Hoge*, 64 N. J. Eq. 807 (1903).

by-law reducing the numbers of a directorate from five to three, which was confirmed at an adjourned meeting of the stockholders, and a new board was elected. As no notice however had been given, either at the original or the adjourned meeting, of the intention to make any change in the by-law the election was invalid.⁶⁶⁵

277. Effect of Presence, but not Voting.—

If those present, having the right and opportunity to vote, refuse to exercise it, and witness without objection, the passage of a by-law by the usual mode of voting, counting and declaring, the objection of an insufficient or invalid vote by reason of not counting non-voters present, can not afterwards be made. By refusing to vote and neglecting to make known their presence and power to defeat the by-law, they virtually sanction the acts of those who voted and waived all objection to their validity.⁶⁶⁶

⁶⁶⁵ *Christopher v. Noxon*, 4 Ont. Rep. 677 (1883).

⁶⁶⁶ *Richardson v. Union Cong. Society*, 58 N. H. 188 (1877).

CHAPTER XIV.

Remedies.

Sect. 1. Mandamus.

278. Kinds of Remedies.—Three legal or equitable remedies are employed in dealing with the matters considered in this work. A mandamus, which is a command by the court requiring things to be done. The most common exercise of it is in giving directors the offices to which they have been elected and been denied possession. A *quo warranto*, which is an inquiry into the authority of a person to hold an office, and if he is not entitled thereto, of turning him out. An injunction, which is an exercise of the restraining power of the court, as in forbidding or restraining the holding of an election.

279. When Mandamus Will be Granted.
—Courts may grant the writ of mandamus to compel officers,⁶⁶⁷ whose duty it is to

⁶⁶⁷ See No. 26, 29.

call meetings, to make the call, should they neglect or refuse to do so.⁶⁶⁸ Likewise if they refuse to call a meeting for the choice of officers, or the adoption of by-laws adapted to a reorganized association, which is no longer composed of the original incorporators, or their successors, but of stockholders, the appropriate remedy is mandamus.⁶⁶⁹

280. Mandamus to the President.—A mandamus will also lie to compel the president of a corporation to call a special meeting of the board of directors when a valid by-law exists requiring the issue of the call after the necessary demand has been first made.⁶⁷⁰ But it will not lie to

⁶⁶⁸ *Cummings v. State*, 149 Pac. 864 (Okla. 1915), citing *People v. Cummings*, 72 N. Y. 433 (1878); *McNeely v. Woodruff*, 13 N. J. Law, 352 (1833); *Barrett v. Atwater*, 65 Conn. 355 (1895).

⁶⁶⁹ *Granara v. Italian Catholic Cem. Association*, 218 Mass. 387 (1914); *McCarthy v. Street Commissioners*, 188 Mass. 338, 340 (1905); *Barrett v. Atwater*, 65 Conn. 355 (1895); *People v. Cummings*, 72 N. Y. 433 (1878).

⁶⁷⁰ *Cummings v. Wallower*, 149 Pac. 864 (1915) 46 Okla.

the president of a corporation commanding him to call a stockholders' meeting whenever the charter gives the board of directors the power to provide for general and special stockholder meetings, and they have not by resolution or by-law required the president to call such meetings.⁶⁷¹ Nor will a writ of mandamus issue to compel trustees *de facto* of a corporation to call an election for trustees when the title *de jure* of the trustees *de facto* is disputed. *Quo warranto* is the proper proceeding in such a case.⁶⁷²

Sect. 2. Quo Warranto.

281. Extension of Quo Warranto.—Another remedy is by a proceeding called a *quo warranto*. In this one's right or title to an office is determined;⁶⁷³ though in some states, notably Massachusetts, the right to an office may be raised on an alternative mandamus.⁶⁷⁴ In many states

⁶⁷¹ Knoll *v.* Leveret, 136 La. Ann. 241 (1914).

⁶⁷² Smith *v.* Trustees of Bethel A. M. E. Church, 89 N. J. Law, 397 (1916).

⁶⁷³ Leeds *v.* Atlantic City, 52 N. J. Law, 332 (1890).

⁶⁷⁴ Putnam *v.* Langley, 133 Mass. 204 (1882);

this common law remedy has been greatly improved by statute, especially in New York, New Jersey and California. Broad powers have been given to the courts to review elections and administer substantial justice to all parties.⁶⁷⁵

282. Who may Complain.—Only a stockholder whose rights have been infringed has any right to complain.⁶⁷⁶ Creditors cannot do so.⁶⁷⁷ Nor can a stockholder who has participated in the fraud,⁶⁷⁸ nor if he has been neglectful,⁶⁷⁹ and has subsequently acquiesced, knowing the facts.⁶⁸⁰

Sect. 3. Injunction.

283. When it May be Granted.—An applicant has the right to an injunction

Strong Petitioner, 37 Mass. 484 (1838); *Ellis v. County Com. of Bristol*, 68 Mass. 370 (1854); *Conlin v. Aldrich*, 98 Mass. 557 (1868).

⁶⁷⁵ 2 Cook on Corporations, § 617.

⁶⁷⁶ *Matter of Syracuse, Chenango & N. Y. R. Co.*, 91 N. H. (1883).

⁶⁷⁷ 2 Cook on Corporations, § 620.

⁶⁷⁸ *Wiltz v. Peters*, 4 La. Ann. 339 (1849).

⁶⁷⁹ *Jones v. Bonanza Min. & Mill Co.*, 32 Utah, 440 (1907).

⁶⁸⁰ *Ibid.*

restraining the holder of his stock from voting it if the danger can be shown, by facts or circumstances, of injury to the applicant's property, inadequacy of legal remedy, or other pressing or serious emergency, or other special ground of jurisdiction.⁶⁸¹ Likewise a stockholder may maintain a suit to enjoin the holder of shares in excess of the amount authorized, from voting them in prejudice of his rights and to procure their cancelation.⁶⁸² So, also, a trustee who holds the stock of a foreign corporation for delivery to an option purchaser, who has not exercised his option, can be enjoined from attempting to vote the stock after the option has expired.⁶⁸³ A minority stockholder may also enjoin the voting of stock held by his company in another when the object of such action is to destroy competition, although the owner-

⁶⁸¹ *McHenry v. Jewett*, 26 Hun, 453 (1882), reversed 90 N. Y. 58; *Ayer v. Seymour*, 5 N. Y. Supp. 650, 655 (1889).

⁶⁸² *Haskell v. Read*, 68 N. H. 107 (1903).

⁶⁸³ *Butler v. Standard Milk Flour Co.*, 146 N. Y. App. Div. 735 (1911).

ship of such stock in a rival company may be valid.⁶⁸⁴ And an unregistered owner of stock may maintain a bill in equity to enjoin the illegal voting by his company of the stock it owns in another.⁶⁸⁵

284. Application of Injunction to Inspectors of Election.—An injunction by which inspectors of election in a corporation are commanded to desist and refrain from holding any election of directors or from receiving and canvassing any votes is entirely void.⁶⁸⁶ Likewise an injunction prohibiting an individual from acting as president of a corporation.⁶⁸⁷ But an injunction requiring inspectors, and their successors to desist and from thus serving, and from holding an election for directors until further order of the court is proper.⁶⁸⁸

⁶⁸⁴ *Bigelow v. Calumet & Hecla Mining Co.*, 155 Fed. 869 (1907). This decision rests on a statute, and the bill was dismissed on final hearing, 167 Fed. 704.

⁶⁸⁵ *O'Connor v. International Silver Co.*, 68 N. J. Eq. 680 (1905).

⁶⁸⁶ *People v. Albany & Susquehanna R.*, 55 Barb. 344 (1869).

⁶⁸⁷ *Ibid.*

⁶⁸⁸ *Ibid.*

285. Injunction to Restrain Assembled Meeting.—The practice of procuring an injunction and serving it after the meeting has assembled should be tolerated only in cases where the right to it is clearly established.⁶⁸⁹

286. When Injunction is not a Proper Remedy.—The granting of an injunction and the appointment of a receiver are not the proper remedies to correct the illegal election of directors.⁶⁹⁰ Nor can stockholders be enjoined from voting on the ground that the persons for whom they may vote may possibly abuse their trust.⁶⁹¹

⁶⁸⁹ *Matter of Rochester Dist. Tel. Co.*, 40 Hun, 172 (1886).

⁶⁹⁰ *Ulmer v. Maine Real Estate Co.*, 93 Me. 324 (1899).

⁶⁹¹ *Lucas v. Milliken*, 139 Fed. 816, 833 (1905).

CHAPTER XV.

Minutes.

287. Duty to Keep Them.—"It is the duty of a corporation to keep a record of the minutes of the meetings of its stockholders and directors. Such minutes should show the date when the meetings were held and also who were present."⁶⁹²

288. Signing of Minutes.—In practice, the minutes of a meeting are commonly made up and entered by the secretary after the meeting is over, and the chairman signs them afterward, generally at the next meeting. There has been much contention whether a resolution passed at a meeting, the minutes of which were entered and signed after the meeting was over, could not, by them, be proved to have been passed. This objection has always been

⁶⁹² Ferriss, P. J., *Howard v. Strode*, 242 Mo. 210, 230 (1912).

overruled, even when the minutes of each meeting ought in strictness to have been signed at the meeting. But the minutes are not the only admissible evidence of what took place at the meeting; and entry in the minutes is not essential to the validity of a resolution.⁶⁹³

289. Minutes as Evidence.—The minutes of a corporation are the best evidence of its action.⁶⁹⁴ But “there is no principle of law or provision of statute under which the records of a private corporation kept by its secretary are to be regarded as conclusive evidence of the facts therein stated.”⁶⁹⁵ Consequently, if the record does not show that the proper amount of stock was voted as required by law, the fact may be shown by extrinsic or parol evidence that the proper amount of stock was voted.⁶⁹⁶ Likewise minority stock-

⁶⁹³ 1 Lindley on the Law of Companies, 433.

⁶⁹⁴ *Harrison v. Morton*, 83 Ind. 456, 475 (1896); *Dennis v. Joslin Mfg. Co.*, 19 R. I. 666 (1896).

⁶⁹⁵ *Middleton v. Arastraville Mining Co.*, 146 Cal. 219, 223 (1905).

⁶⁹⁶ *Franklin Trust Co. v. Rutherford, etc., Co.*, 57 N. J. Eq. 42 (1898).

holders who attack the record may show by parol evidence that the true minutes of the meeting were the very opposite of that shown by the official record.⁶⁹⁷

Again, "in interpreting the action of stockholders in passing a resolution, the facts and circumstances surrounding them may legitimately be looked into."⁶⁹⁸ But parol evidence of what was said at a stockholders' meeting cannot be introduced to change the effect of an unambiguous resolution.⁶⁹⁹

If no minutes of the meeting of a stock corporation are kept, parol proof of the proceedings may be admitted.⁷⁰⁰ And

⁶⁹⁷ *Just v. Idaho Canal & Imp. Co.*, 16 Idaho, 529 (1909), citing *Gilson Quartz Mining Co. v. Gilson*, 51 Cal. 341 (1876); *Holden v. Hoyt*, 134 Mass. 184 (1883).

⁶⁹⁸ *Zeckendorf v. Steinfeld*, 225 U. S. 445, 457 (1912), citing *Canal Co. v. Hill*, 82 U. S. 94, 100, 101 (1872).

⁶⁹⁹ *Lipsett v. Hassard*, 158 Mich. 509 (1909); *Peterborough Railroad v. Wood*, 61 N. H. 418 (1881); *Gould v. Norfolk Lead Co.*, 63 Mass. 338, 345 (1852).

⁷⁰⁰ *Merchants & Farmers' Bank v. Harris Lumber*

the same rule applies to a voluntary association.⁷⁰¹ Lastly, if a statute requires the minutes to be signed this need not be done at the close of the meeting, but may be done subsequently.⁷⁰²

290. Who Should Keep Minutes.—The secretary of a corporation, or one who is acting as secretary, is the proper officer to keep the minutes, and the proper person by whom their authenticity and correctness may be proved.⁷⁰³

Co., 146 S. W. 508 (Ark. —); Birmingham R. & Electric Co. *v.* Birmingham Traction Co., 128 Ala. 110 (1900); Allis *v.* Jones, 45 Fed. 148, 149 (1891), citing many cases; 2 Cook on Corporations, § 714 (6th ed.).

⁷⁰¹ Masonic Mutual Benefit Association *v.* Severson, 71 Conn. 719 (1899).

⁷⁰² Miles *v.* Bough, 3 Q. B. 845 (1842); Southampton Dock Co. *v.* Richards, 1 Mann. & Gr. 448 (1840).

⁷⁰³ Bridges *v.* Southern Bell Tel. Co., 15 Ga. App. 291 (1914); Fraternal Relief Association *v.* Edwards, 9 Ga. App. 43, 53 (1910); Lowry Nat. Bank *v.* Fickett, 122 Ga. 489 (1905).

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Rules of
Parliamentary Law

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PARLIAMENTARY PRACTICE.

INTRODUCTION.

1. Organization.—The purposes, whatever they may be, for which a deliberate assembly of any kind is constituted, can only be effected by ascertaining the sense or will of the assembly, in reference to the several subjects submitted to it, and by embodying that sense or will in an intelligible, authentic, and authoritative form. To do this, it is necessary, in the first place, that the assembly should be promptly constituted and organized ; and, secondly, that it should conduct its proceedings according to certain rules, and agreeably to certain forms, which experience has shown to be the best adapted to the purpose.

2. Municipal and Corporate Organization.—Some deliberative assemblies, especially those which consist of permanently established bodies, such as municipal and other corporations, are usually constituted and organized, at

least in part, in virtue of certain legal provisions; while others, of an occasional or temporary character, such as conventions and political meetings, constitute and organize themselves on their assembling together for the purposes of their appointment.

3. Temporary Organization.—The most usual and convenient mode of organizing a deliberative assembly is the following:—The members being assembled together, in the place, and at the time appointed for their meeting, one of them, addressing himself to the others, requests them to come to order; the members thereupon seating themselves, and giving their attention to him, he suggests the propriety and necessity of their being organized, before proceeding to business, and requests the members to nominate some person to act as chairman of the meeting; a name or names being thereupon mentioned, he declares that such a person (whose name was first heard by him) is nominated for chairman, and puts a question that the person so named be requested to take the chair. If this question should be decided in the negative, another nomination is then to be called for, and a question put upon the name mentioned (being that of some other person)

as before, and so on until a choice is effected. When a chairman is elected, he takes the chair, and proceeds in the same manner to complete the organization of the assembly, by the choice of a secretary and such other officers, if any, as may be deemed necessary.

4. Permanent Organization.—An organization, thus effected, may be, and frequently is, sufficient for all the purposes of the meeting; but if, for any reason, it is desired to have a greater number of officers, or to have them selected with more deliberation, it is the practice to organize temporarily, in the manner above mentioned, and then to refer the subject of a permanent organization, and the selection of persons to be nominated for the several offices, to a committee; upon whose report the meeting proceeds to organize itself, conformably thereto, or in such other manner as it thinks proper.

5. Officers.—The presiding officer is usually denominated the *president*, and the recording officer the *secretary*; though sometimes these officers are designated, respectively, as the *chairman* and *clerk*. It is not unusual, besides a president, to have one or more vice-presidents, who take the chair, occasionally, in

the absence of the president from the assembly, or when he withdraws from the chair to take part in the proceedings as a member; but who, at other times, though occupying seats with the president, act merely as members. It is frequently the case, also, that several persons are appointed secretaries, in which case the first named is considered as the principal officer. All the officers are, ordinarily, members of the assembly;* and, as such, entitled to participate in the proceedings; except that the presiding officer does not usually engage in the debate, and votes only when the assembly is equally divided. (See note, p. 148.)

6. Membership.—In all deliberative assemblies, the members of which are chosen or appointed to represent others, it is necessary, before proceeding to business, to ascertain who are duly elected and returned as members; in order not only that no person may be admitted to participate in the proceedings who is not regularly authorized to do so, but also that a

* In legislative bodies, the clerk is seldom or never a member; and, in some, the presiding officer is not a member; as, for example, in the Senate of the United States, the Senate of New York, and in some other State senates.

list of the members may be made for the use of the assembly and its officers.

7. Reports on Membership.—The proper time for this investigation is after the temporary and before the permanent organization ; or, when the assembly is permanently organized, in the first instance, before it proceeds to the transaction of any other business ; and the most convenient mode of conducting it is by the appointment of a committee to receive and report upon the credentials of the members.* The same committee may also be charged with the investigation of rival claims, where any such are presented.

8. Question of Membership.—When a question arises, involving the right of a member to his seat, such member is entitled to be heard on the question, and he is then to withdraw from the assembly until it is decided ; but if, by the indulgence of the assembly, he remains in his place during the discussion, he ought neither to take any further part in it, nor to vote when the question is proposed ; it

* In reporting the list of members with proper credentials, the committee may report the names of contestants with recommendations for the action of the assembly, and these may be followed, modified, or rejected.—B.

being a fundamental rule of all deliberative assemblies, that those members, whose rights as such are not yet set aside, constitute a judicial tribunal to decide upon the cases of those whose rights of membership are called in question.* Care should always be taken, therefore, in the selection of the officers, and in the appointment of committees, to name only those persons whose rights as members are not objected to.

9. Right of Membership.—The place where an assembly is held, being in its possession, and rightfully appropriated to its use, no person is entitled to be present therein, but by the consent of the assembly; and, consequently, if any person refuse to withdraw, when ordered to do so, or conduct himself in a disorderly or improper manner, the assembly may unquestionably employ sufficient force to remove such person from the meeting.

10. Established Rules.—Every deliberative assembly, by the mere fact of its being assembled and constituted, does thereby necessarily adopt and become subject to those rules

* By the federal constitution and the constitution of the States, each House acts as a judge of the elections, returns and qualifications of its own members.—B.

and forms of proceeding, without which it would be impossible for it to accomplish the purposes of its creation. It is perfectly competent, however, for every such body—and where the business is of considerable interest and importance, or likely to require some time for its accomplishment, it is not unusual—to adopt also certain special rules for the regulation of its proceedings. Where this is the case, these latter supersede the ordinary parliamentary rules, in reference to all points to which they relate; or add to them in those particulars in reference to which there is no parliamentary rule; leaving what may be called the common parliamentary law in full force in all other respects.

II. Rules of Proceeding.—The rules of parliamentary proceedings in this country are derived from, and essentially the same with, those of the British parliament; though, in order to adapt these rules to the circumstances and wants of our legislative assemblies, they have, in some few respects, been changed,—in others, differently applied,—and in others, again, extended beyond their original intention. To these rules, each legislative assembly is accustomed to add a code of its own, by

which, in conjunction with the former, its proceedings are regulated. The rules, thus adopted by the several legislative assemblies, having been renewed in successive legislatures,—with such extensions, modifications and additions as have been from time to time thought necessary,—the result is, that a system of parliamentary rules has been established in each State, different in some particulars from those of every other State, but yet founded in and embracing all the essential rules of the common parliamentary law.

12. Parliamentary Practice in Force.

—The rules of proceeding, in each State, being of course best known by the citizens of that State, it has sometimes happened, in deliberative assemblies, that the proceedings have been conducted not merely according to the general parliamentary law, but also in conformity with the peculiar system of the State in which the assembly was sitting, or of whose citizens it was composed. This, however, is erroneous ; as no occasional assembly can ever be subject to any other rules than those which are of general application, or which it specially adopts for its own government ; and the rules adopted and practised upon by a legislative

assembly do not thereby acquire the character of general laws.

13. Orders, Resolutions and Votes.—

The judgment, opinion, sense, or will of a deliberative assembly is expressed, according to the nature of the subject, either by a resolution, order, or vote. When it commands, it is by an *order*; but facts, principles, its own opinions or purposes, are most properly expressed in the form of a *resolution*; the term *vote* may be applied to the result of every question decided by the assembly. In whatever form, however, a question is proposed, or by whatever name it may be called, the mode of proceeding is the same.

14. Ascertaining the Will of the Assembly.—

The judgment or will of any number of persons, considered as an aggregate body, is that which is evidenced by the consent or agreement of the greater number of them; and the only mode by which this can be ascertained, in reference to any particular subject, is for some one of them to begin by submitting to the others a proposition, expressed in such a form of words, that, if assented to by the requisite number, it will purport to express the judgment or will of the assembly. This prop-

osition will then form a basis for the further proceedings of the assembly ; to be assented to, rejected, or modified, according as it expresses or not, or may be made to express the sense of a majority of the members. The different proceedings which take place, from the first submission of a proposition, through all the changes it may undergo, until the final decision of the assembly upon it, constitute the subject of the rules of debate and proceeding in deliberative assemblies.

15. **Motions and Forms of Question.**

—If the proceedings of a deliberative assembly were confined to the making of propositions by the individual members, and their acceptance or rejection by the votes of the assembly, there would be very little occasion for rules in such a body. But this is not the case. The functions of the members are not limited to giving an affirmative or negative to such questions as are proposed to them. When a proposition is made, if it be not agreed to or rejected at once, the assembly may be unwilling to consider and act upon it at all ; or it may wish to postpone the consideration of the subject to a future time ; or it may be willing to adopt the proposition with certain modifica-

tions; or, lastly, approving the subject-matter, but finding it presented in so crude, imperfect, or objectionable a form, that it cannot in that state be considered at all, the assembly may desire to have the proposition further examined and digested before being presented. In order to enable the assembly to take whichever of the courses above indicated it may think proper, and then to dispose of every proposition in a suitable manner, certain motions or forms of question have been invented, which are perfectly adapted to the purpose, and are in common use in all deliberative assemblies.

15 a. Object of Meeting.—Rules of procedure somewhat differ with the object of association. If the association is to be permanent, then its rules of procedure are either established by law, or by the association itself, at an early meeting. If the association is of a temporary character, then as soon as the organization is completed the chairman inquires what is the object of the meeting, often using the well-known phrase, “What is the further pleasure of the meeting?” The meeting may be a public one, at which some person offers a series of resolutions that have been pre-

viously prepared ; or if none have been, some person may state the object of the meeting, and move the appointment of a committee to prepare and report resolutions.—B.

15 b. Methods of Procedure.—In every case, when one rises to address the chair, the chairman responds, calling the speaker by name, or, if not knowing it, inquiring of the speaker himself for his name. Sometimes the speaker on rising will state his name, if he thinks it is not known by the chairman, or perhaps some one else will announce the name. When he has thus obtained the floor and been recognized, he may, if having resolutions to offer, preface them with an explanation, and then move their adoption and immediately hand them to the chairman or secretary. In legislative bodies all resolutions and other papers are sent to the secretary's desk, but in temporary bodies it is proper to deliver the resolutions to the chairman himself.—B.

15 c. Resolutions.—When resolutions have thus been presented, one of several courses may be taken. The chairman may direct the secretary to read them again, or such a request may be made to him ; if so, they are usually read again for the better understanding of all pres-

ent. When their reading is completed, the chairman states that the question is on the adoption of the resolutions just read, and, pausing for a moment, he adds: "Are you ready for the question?" His action does not signify that he intends to put the question at once. This is simply a formal manner of bringing the resolutions before the body for consideration. Now, therefore, is the time for discussing them, and a discussion often follows. If the resolutions are important, some one usually wishes to say something, or to offer an amendment. But if there is silence, the chairman then puts the question by saying, "As many as are in favor of the adoption of the resolutions just read will say aye;" and often after the ayes have voted, he says, "As many as are of a contrary mind will say no." Then he announces the result by saying, if the ayes have prevailed, "The resolutions are adopted;" or, "The ayes have it, the resolutions are adopted."—B.

15d. Purpose of Meeting.—It may be that a meeting is called for a well-known purpose, but no resolutions have been prepared as the probable expression of its action. In such a case, after an organization has been effected,

and the chairman has inquired what is the pleasure of the meeting, some one rises and, either after making a further explanation than was made at the outset, or perhaps none at all, moves the appointment of a committee to draft resolutions expressive of the sense of the meeting on the subject before it. After the seconding of the motion, the chairman asks, "Are you ready for the question?" and if no one discusses the motion the question is put and the result is announced.—B.

15 e. Committee on Resolutions.—He next inquires, "Of how many shall the committee consist?" Sometimes only one number is mentioned; if so, he is governed by the seeming will of those present. If more than one number is mentioned, he states them all; and then asks for a vote on each, beginning either with the smallest or the largest number, and continuing until a number is determined. The next inquiry relates to their manner of appointment. The chairman asks, "How shall they be appointed?" and in many cases those present say, "By the chair," and if no objection is heard to this method, he makes a selection. Usually the person who makes the motion is appointed first, and thereby becomes

chairman. The chairⁿ may appoint the committee at once, or ask for delay. Not unfrequently the work of these meetings is well-arranged beforehand,—the selection of a chairman, secretary and members of committees,—and the chairman is merely a part of the machinery, and in appointing committees is merely announcing names selected by others behind the scene.—B.

15 f. Naming the Committee.—If, however, some persons in the meeting favor the other method, “By nomination,” then the chairman must follow their wishes, unless there is a vote on the matter, which is rarely taken. In naming members of a committee, no person, except by unanimous consent, can name more than one, and a vote is taken on each nomination. When the chairman appoints, there is one vote on all the appointees.—B.

15 g. Committee Reports.—The member first nominated or appointed then requests the other members to meet him at a designated place, or this request may be made through the chairman. While they are considering what to report, the meeting may adjourn “subject to the call of the chairman,” or remain in session entertaining itself as best it can. When

the report is ready the chairman of the committee, addressing the chairman, says: "The committee appointed to draft resolutions are prepared to report." To this the chairman responds by saying that "the meeting will now listen to the report of the committee," which is usually read by the chairman of the committee, and afterward handed to the presiding officer or to the secretary. This done, the committee is dissolved without action by the meeting.—B.

15 h. Action on Report.—Action is now taken on the report. Some one moves its "adoption" or "acceptance." In assemblies more strictly governed there are two processes, the acceptance of the report and its adoption, for a report can be received and the committee be discharged without adopting the report, and thus making it the sense of all. Of course, the report is now before the meeting for debate, modification, acceptance, or rejection. When final action is taken there is nothing further to do, and a motion "to adjourn" is made, and the result is announced by the chairman.—B.

15 i. Organization of Continuous Bodies.
—The organizing of some other bodies may be

briefly considered. One of these is a body the membership of which consists partly of existing or continuing members, and new ones. "In all cases where part of the public body remains, and is to be completed by the reception of new members, it remains as an organized nucleus, and in its organized form it receives the new members, and then proceeds to the election of new officers, if any are to be elected. The old nucleus is not dissolved by the incoming elements, but these are added to it, and then the whole body proceeds to the exercise of all its functions."* Thus an ordinance of the common council of a city provided that the clerk and his assistant should continue in office until the organization of the new council and until their successors should be duly elected. At the organization of the new council there were present twenty-three members whose term did not end for a year, among whom was the president. The president and clerks were in their usual places on the day and at the hour appointed by law for organizing the new council. Two bodies organized, but it was declared by the court that it was the right of the officers above

* Chief Justice Lowrie in *Kerr v. Trego*, 57 Pa., 297.

mentioned to organize the council by first calling the roll of members whose terms had not expired, and then requiring the new members to present their certificates, that their names might also be enrolled. Such a mode of proceeding, said the court, "has the sanction of the common usage of every public body into which only a portion of new members is annually infused. It is the periodical form of reorganizing the Select Council [of Philadelphia] and Senate of the State [of Pennsylvania], and also the form of organizing the Senate of the United States on the meeting of a new Congress, where the vice-president does not appear, and the last president *pro tem.* does; 'and we understand this custom to be uniform throughout the United States.' " *—B.

15 j. Corporate Organization.—Two cases of organizing meetings may be given in which the courts considered the question whether or not proper organizations had been effected. In one of these a corporation in New Jersey held a stockholders' meeting for the purpose of authorizing the issue of some

* 57 Pa. Rep., 292.

bonds. A by-law provided that five-eighths of its stock should be represented at such a meeting. The stock was divided into three thousand shares, and at the meeting above mentioned only four stockholders were present, who represented 469 shares. But the wives of two of them owned 2000 shares ; the minutes, however, did not show either that they were present, or that their husbands were authorized to act for them. Notwithstanding this defect in the minutes, the proof showed that their husbands did present proxies for them and voted on their stock. As the proof was complete, the court declared that the bonds issued were valid. In another case a disorder occurred at a corporate meeting in which all parties participated. After the disorder had ceased, several of the stockholders withdrew for the purpose of carrying out a preconceived scheme to organize and conduct the meeting in their own interests. Their call to withdraw was not made to all the stockholders, but only to members of their own faction. They organized another meeting, but before voting sent an invitation to the other stockholders to come and vote. Nevertheless, the acts of the meeting were illegal, and the invitation to the other

stockholders was ineffectual to cure the radical defects of organization.*—B.

* 158 Pa. Rep., 476.

“The violation of parliamentary law does not of itself make void the proceedings of a deliberative body.”
—Pleasants, J., 48 Southwestern Rep., 790.

If in electing corporate officers no particular mode of proceeding is prescribed by law, and the wishes of the corporators have been fairly expressed, and the election has been conducted in good faith, it will not be set aside for any informality in the manner of conducting it.—1 Paige's Rep., 598.

CHAPTER I.

Of Certain Preliminary Matters.

16. Preliminary Matters.—Before entering upon the subject of the forms and rules of proceeding, in the transaction of business, it will be convenient to consider certain matters of a preliminary nature, which are more or less essential to the regularity, despatch and efficiency of the proceedings.

Section I. Quorum.*

17. Need of.—In all councils, and other collective bodies of the same kind, it is neces-

* “The term *quorum* (literally, *of whom*) is one of the words used in England in the Latin form of the commission to justices of the peace. The part of the document wherein the word occurs reads thus: ‘We have assigned you, and every two or more of you, *quorum aliquem vestrum*, A, B, C, D, etc., *unum esse volumus*,—i.e., *of whom* we will that any one of you, A, B or C, etc., shall be one.’ This made it necessary that certain individuals, who, in the language of the commission, were said to be of the *quorum*, should be present during the transaction of business.”—Blackstone’s Commentaries, I., 352.

sary that a certain number, called a quorum, of the members should meet and be present, in order to the transaction, of business. This regulation has been deemed essential to secure fairness of proceeding, and to prevent matters from being concluded in a hasty manner, or agreed to by so small a number of the members as not to command a due and proper respect.

18. Number and How Fixed.—The number necessary to constitute a quorum of any assembly may be fixed by law, as is the case with most of our legislative assemblies; or by usage, as in the English House of Commons;* or it may be fixed by the assembly itself; but if no rule is established on the subject, in any of these ways, a majority of the members composing the assembly is the requisite number.

18 a. Federal Rule.—The Constitution of the United States provides that “a majority of each [house] shall constitute a quorum to do business.” “In other words,” says Mr. Justice Brewer, “when a majority are present the house is in a position to do business. Its capacity to transact business is then established,

* In the House of Commons, forty constitute a quorum. In the House of Lords, three.

created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present.”—[B.]

18 b. When a Quorum Consists of a Majority.—A quorum, unless a specific rule has been established by positive law, consists of a majority of the members of the body, and a quorum possesses all the powers of all. Furthermore, a majority of the quorum govern. Thus, if a body consists of twelve councilmen, seven is the least number that can constitute a valid meeting, though the action of four of the seven may bind the rest. In other words, action by the four binds the twelve.—[B.]

18 c. Quorum of a Voluntary Association.—When a voluntary association composed of an indefinite number of members has no rule prescribing the number that shall constitute a quorum, but has been accustomed to hold meetings pursuant to notices published in the newspapers and to transact its business regardless of the number in attendance, the members attending any meeting constitute a quorum. Those who do not attend impliedly assent that those who do should by a majority

vote transact the business of the association.* And when the members attending such a meeting constitute a quorum, the withdrawal from it of a minority does not affect the right of those remaining to proceed with the transaction of business.†—[B.]

18 d. Quorum of Directors.—With respect to directors, a majority of a board form a quorum, unless a positive regulation exists; and a majority of the quorum determine the action of the board. “It has been held that if a quorum of the directors of a company meet and unite in any determination, the company is bound thereby, whether the other directors were notified or not. But this view is certainly not correct. The shareholders in a corporation are entitled not only to the votes of the directors, but also to their influence and argument in the discussion which leads to the passage of their resolutions. While it may not be the duty of every director to be present at every meeting of the board, yet it is certainly the intention of the shareholders that every director shall have a right to be present at every meeting in order to acquire full information

* 43 New York Supp., 852.

† *Ib.*

concerning the affairs of the corporation, and to give the other directors the benefit of his judgment and advice. If meetings could be held by a bare quorum, without notifying the other directors, the majority might virtually exclude the minority from all participation in the management of the company. If it appears that a meeting of the directors was attended by a quorum, it will be presumed, in the absence of the contrary, that due notice of the meeting was given to all the directors, and that all necessary formalities have been complied with.*
—[B.]

18 e. Number Necessary at Meetings of Shareholders.—It is not necessary for a majority of all the shareholders of a corporation to be present at a meeting to render effective and binding any resolutions that may be passed. Unless there be an express provision to the contrary, the rule is that the stockholders who actually assemble at a properly convened meeting constitute a quorum for the transaction of business, and a majority of that quorum have authority to represent the corporation.†—[B.]

* Morawetz on Private Corporations, §532.

† Morawetz on Corporations, §476. .

18 f. Force of By-law Fixing Quorum of Shareholders.—A by-law providing that a quorum shall consist of one-third of the stockholders holding at least one-third of the shares does not require that one-third of the authorized shares of stock be represented, but only that those present shall hold one-third of the shares actually issued.*—[B.]

19. Must be Present.—No business can regularly be entered upon until a quorum is present ; nor can any business be regularly proceeded with when it appears that the members present are reduced below that number ; consequently, the presiding officer ought not to take the chair until the proper number is ascertained to be present ; and if, at any time, in the course of the proceedings, notice is taken that a quorum is not present, and, upon the members being counted by the presiding officer, such appears to be the fact, the assembly must be immediately adjourned.

19 a. How Presence of May be Determined.—In determining the presence of a majority the Constitution has prescribed no method of doing it. As it is silent, Mr. Jus-

* 50 Ct. Rep., 558.

tice Brewer has declared that it is "within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact." Consequently Rule XV. of the House of Representatives of the fifty-first Congress, that "on the demand of any member, or at the suggestion of the speaker, the names of members sufficient to make a quorum in the hall of the house who do not vote shall be noted by the clerk and recorded in the journal, and reported to the speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business," is a constitutional mode of ascertaining the presence of a quorum.*—[B.]

Sect. II. Rules and Orders.

20. Power of Assembly to Provide Rules.—Every deliberative assembly, as has already been observed, is, by the fact alone of its existence, subject to those rules of proceeding, without which it could not accomplish the purposes of its creation. It may also provide rules for itself, either in the form of a general

* United States v. Ballin, 144 U. S. Rep., 1.

code established beforehand, or by the adoption, from time to time, during its sitting, of such special rules as it may find necessary.

21. How Amended.—When a code of rules is adopted beforehand, it is usual also to provide therein as to the mode in which they may be amended, repealed, or dispensed with. Where there is no such provision, it will be competent for the assembly to act at any time, and in the usual manner, upon questions of amendment or repeal ; but in reference to dispensing with a rule, or suspending it, in a particular case, if there is no express provision on the subject, it seems that it can only be done by general consent.

22. How Enforced.—When any of the rules, adopted by the assembly, or in force, relative to its manner of proceeding, is disregarded or infringed, every member has the right to take notice thereof and to require that the presiding officer, or any other whose duty it is, shall carry such rule into execution ; and, in that case, the rule must be enforced, at once, without debate or delay. It is then too late to alter, repeal, or suspend the rule ; so long as any one member insists upon its execution, it must be enforced.

Sect. III. Time of Meeting.

23. Time of Meeting.—Every assembly, which is not likely to finish its business at one sitting, will find it convenient to come to some order or resolution beforehand, as to the time of reassembling, after an adjournment ; it being generally embarrassing to fix upon the hour for this purpose, at the time when the sitting is about to close, and in connection with the motion to adjourn.

Sect. IV. Principle of Decision.

24. Rule of Majority.—The principle, upon which the decisions of all aggregate bodies, such as councils, corporations, and deliberative assemblies, are made, is that of the majority of votes or suffrages ; and this rule holds not only in reference to questions and subjects which admit only of an affirmative on one side and a negative on the other, but also in reference to elections in which more than two persons may receive the suffrages.

24 a. A Proposition is Carried by Majority of Votes Cast.—Unless there be a regulation to the contrary,* when a quorum of a body is present and its journal properly shows

their presence, a proposition is carried by a majority of the votes cast. "The exercise of law-making power is not stopped by the mere silence and inaction of some of the law-makers who are present. An arbitrary, technical and exclusive method of ascertaining whether a quorum is present operating to prevent the performance of official duty and obstruct the business of government is no part of our common law."—[B.]*

25. Rule of Majority Qualified.—But this rule may be controlled by a special rule in reference to some particular subject or question, by which any less number than a majority may be admitted, or any greater number required to express the will of the assembly. Thus, it is frequently provided, in legislative assemblies, that one-third or one-fourth only of the members shall be sufficient to require the taking of a question by yeas and nays, and, on the other hand, that no alteration shall take place in any of the rules and orders, without the consent of at least two-thirds, or even a larger number.

25 a. Rights of Minority of Stockholders.—The rights of a minority at a stock-

* 62 New Hamp. Rep., 383.

holders' meeting is often a question of the utmost importance. It has been decided that a stockholder owning a majority of the subscribed capital stock of a corporation who has acquiesced in the organization of a stockholders' meeting and participated in its business, for example, nominating persons for directors, cannot withdraw from the meeting and organize another at the same time and in the same place, and elect the same persons directors for whom he had voted at the other meeting. A case of this kind arose in North Dakota in which the court remarked that it was the duty of the principal stockholder who thus withdrew and attempted to hold another meeting "to remain at the stockholders' meeting as organized, and vote his stock at that meeting. This he did not do, and we are of opinion that voting the stock at another meeting, which he held with others in the same room, at the same time, was of no effect. A minority must have a right to insist that, after a meeting is organized, the majority shall not withdraw from it and organize another meeting, at which the minority must appear and lose their rights. Once concede the right, and there is no limit to the number of wrecked meetings which may,

at the caprice of a majority, precede the transaction of any business."—[B.]*

25 b. Rights of Minority of Committee.—"As a general rule, it may be stated, that not only where the corporate power resides in a select body, as a city council, but where it has been delegated to a committee or agents, then, in the absence of special provisions otherwise, a minority of the select body, or of the committee or agents, are powerless to bind the majority or do any valid act. If all the members of the select body or committee or if all of the agents are assembled, or if all have been duly notified, and the minority refuse or neglect to meet with the others, a majority of those present may act, provided those present constitute a majority of the whole number. In other words, in such a case, a major part of the whole is necessary to constitute a quorum, and a majority of the quorum may act. If the major part withdraw so as to leave no quorum, the power of the minority to act is, in general, considered to cease."—[B.]†

*1 North Dak. Rep., 434, 449.

† Dillon on Municipal Corporations, §283.

CHAPTER II.

Of the Officers.

26. **Officers.**—The usual and necessary officers of a deliberative assembly are those already mentioned, namely, a presiding and a recording officer, both of whom are elected or appointed by the assembly itself, and removable at its pleasure. These officers are always to be elected by absolute majorities, *even in those States in which elections are usually effected by a plurality*, for the reason that, being removable at the pleasure of the assembly, if any number short of a majority were to elect, a person elected by such less number would not be able to retain his office for a moment ; inasmuch as he might be instantly removed therefrom, on a question made for that purpose, by the votes of those who had voted for other persons on the election ; and it is essential to the due and satisfactory performance of the functions of these officers that they should possess the confidence of the assembly, which they cannot be said to

do, unless they have the suffrages of at least a majority.

Sect. I. The Presiding Officer.

27. Duties of.—The principal duties of this officer are the following :—

To open the sitting, at the time to which the assembly is adjourned, by taking the chair and calling the members to order ;

To announce the business before the assembly in the order in which it is to be acted upon ;

To receive and submit, in the proper manner, all motions and propositions presented by the members ;

To put to vote all questions, which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result ;

To restrain the members, when engaged in debate, within the rules of order ;

To enforce on all occasions the observance of order and decorum among the members ;

To receive all messages and other communications and announce them to the assembly ;

To authenticate, by his signature, when necessary, all the acts, orders, and proceedings of the assembly ;

To inform the assembly, when necessary, or when referred to for the purpose, in a point of order or practice ;

To name the members (when directed to do so in a particular case, or when it is made a part of his general duty by a rule,) who are to serve on committees ; and, in general,

To represent and stand for the assembly, declaring its will, and in all things obeying implicitly its commands.

28. When the Vice-President Presides.—If the assembly is organized by the choice of a president and vice-presidents, it is the duty of one of the latter to take the chair, in case of the absence of the president from the assembly, or of his withdrawing from the chair for the purpose of participating in the proceedings.

29. Pro Tempore President.—Where but one presiding officer is appointed, in the first instance, his place can only be supplied, in case of his absence, by the appointment of a president or chairman *pro tempore* ; and in the choice of this officer, who ought to be elected before any other business is done, it is the duty of the secretary to conduct the proceedings.

29 a. When Speaker Can Appoint a Substitute.—The speaker of the National House of Representatives may appoint a substitute for one day, or, if sick for a longer period, not exceeding ten days, provided the House approves his choice. If the speaker omits to make an appointment, or is absent, the House elects a speaker *pro tem*.—[B.]

29 b. Election of Federal and State Presidents Pro Tempore.—The president *pro tempore* of the United States Senate is elected for a Congress, and of a State Senate for a session. He is sometimes elected at the close of a session of a State legislature to serve at the next session. During the absence of the regular officers of the two Houses of Parliament, the chairman of the committee of ways and means of each house serves as speaker.—[B.]

30. When He Should Sit or Stand.—The presiding officer may read sitting, but should rise to state a motion or put a question to the assembly.

30 a. Power of President of Corporate Meeting.—A person who has been chosen to preside at a corporate meeting is entitled to call an adjourned meeting to order, and to

continue to preside unless superseded in some orderly and recognized parliamentary manner. [B.]

30 b. When He Cannot Adjourn It.—

A president of a corporation cannot adjourn a stockholders' meeting without day against their will. Otherwise he could prevent the annual election of directors, and perpetuate in office indefinitely, at his own pleasure, himself and the other directors.*—[B.]

Sect. II. The Recording Officer.

31. Duties of.—The principal duties of this officer consists in taking notes of all the proceedings, and in making true entries in his journal of all "the things done and past" in the assembly; but he is not, in general, required to take minutes of "particular men's speeches," or to make entries of things merely proposed or moved, without coming to a vote. He is to enter what is done and past, but not what is said or moved. This is the rule in legislative assemblies. In others, though the spirit of the rule ought to be observed, it is generally expected, of the secretary, that his

* 49 Pacific Rep., 41.

record shall be both a journal and in some sort a report of the proceedings.

31 a. His Duty to Make Roll of Members.—The clerk of the lower House of Congress makes up the roll of membership, presides until the speaker is elected, and announces his election.—[B.]

31 b. Entering of Minutes of Corporation.—The minutes of a corporation need not be entered up in the handwriting of the secretary, or “approved by the board.” Indeed, a resolution passed by a board, if the fact be proved, would be valid though never entered on the minutes.—[B.]*

32. Duties of Secretary.—It is also the duty of the secretary to read all papers, etc., which may be ordered to be read; to call the roll of the assembly, and take note of those who are absent when a call is ordered; to call the roll and note the answers of the members when a question is taken by yeas and nays; to notify committees of their appointment and of the business referred to them; and to authenticate by his signature (sometimes alone and sometimes in conjunction with the president)

* 19 New Jersey Eq. Rep., 402.

all the acts, orders, and proceedings of the assembly. [The clerk may, on motion, enter the protest of any member, and his reason therefor, against a measure, on the journal. In some States this right is secured to members by constitutional provision. In 1834 President Jackson sent a protest to the Senate against some condemnatory resolutions passed against him by that body, but it refused to receive his protest, declaring that it was a breach of privilege.—B.]

33. Custody of Papers, etc.—The clerk is also charged with the custody of all the papers and documents of every description belonging to the assembly, as well as the journal of its proceedings, and is to let none of them be taken from the table by any member or other person, without the leave or order of the assembly.

34. Secretary Pro Tempore.—When but a single secretary or clerk is appointed, his place can only be supplied, during his absence, by the appointment of some one to act *pro tempore*. When several persons are appointed, this inconvenience is not likely to occur.

35. When He Should Stand.—The clerk should stand while reading or calling the assembly.

CHAPTER III.

Of the Rights and Duties of the
Members.

36. **Equality.**—The rights and duties of the members of a deliberative assembly, as regards one another, are founded in and derived from the principle of their absolute equality among themselves. Every member, however humble he may be, has the same right, with every other, to submit his propositions to the assembly, to explain and recommend them in discussion, and to have them *patiently* examined and deliberately decided upon by the assembly; and, on the other hand, it is the duty of every one so to conduct himself, both in debate and in his general deportment in the assembly, as not to obstruct any other member in the enjoyment of his equal rights. The rights and duties of the members require to be explained only in reference to words spoken in debate (whether spoken of a member or otherwise) and to general deportment. The first will be most con-

veniently noticed in the chapter on Debate; the other will be considered in this place.

37. Decorum.—The observance of decorum by the members of a deliberative assembly is not only due to themselves and to one another, as gentlemen assembled together to deliberate on matters of common importance and interest, but is also essential to the regular and satisfactory proceeding of such an assembly. The rules on this subject, though generally laid down with reference to decorum in debate, are equally applicable whether the assembly be at the time engaged in debate or not; and, therefore, it may be stated, generally, that no member is to disturb another, or the assembly itself, by hissing, coughing, or spitting; by speaking or whispering to other members; by standing up to the interruption of others; by passing between the presiding officer and a member speaking; going across the assembly room, or walking up and down in it; taking books or papers from the table, or writing there.

38. Breaches of Decorum.—All these breaches of decorum are doubtless aggravated by being committed while the assembly is engaged in debate, though equally contrary to the rules of propriety under any other circumstances.

Assaults, by one member upon another,—threats,—challenges,—affrays, etc., are also breaches of decorum.

39. Wearing of the Hat.—It is also a breach of decorum for a member to come into the assembly room with his head covered, or to remove from one place to another with his hat on, or to put his hat on in coming in or removing, or until he has taken his seat; and in many assemblies, especially those which consist of a small number of members, it is not the custom to have the head covered at all.

40. Proceedings When One is Disorderly.—In all instances of irregular and disorderly deportment, it is competent for every member, and is the special duty of the presiding officer, to complain to the assembly, or to take notice of the offence, and call the attention of the assembly to it. When a complaint of this kind is made by the presiding officer, he is said to *name* the member offending; that is, he declares to the assembly that such a member, calling him by name, is guilty of certain irregular or improper conduct. The member who is thus charged with an offence against the assembly is entitled to be heard in his place in exculpation, and is then to withdraw. Being

withdrawn, the presiding officer states the offence committed, and the assembly proceeds to consider the degree and amount of punishment to be inflicted. The assembly may allow the member complained of to remain, when he offers to withdraw; or, on the other hand, it may require him to withdraw, if he do not offer to do so of his own accord. The proceedings are similar when the complaint is made by a member, except that the offence is stated by such member, instead of being stated by the presiding officer.

41. When Disorderly Member Should Not be Present.—No member ought to be present in the assembly when any matter or business concerning himself is debating; nor, if present by the indulgence of the assembly, ought he to vote on any such question. Whether the matter in question concern his private interest, or relate to his conduct as a member,—as for a breach of order, or for matter arising in debate,—as soon as it is fairly before the assembly the member is to be heard in exculpation, and then to withdraw until the matter is settled. If, notwithstanding, a member should remain in the assembly and vote, his vote may and ought to be disallowed; it

being contrary, not only to the laws of decency, but to the fundamental principle of the social compact, that a man should sit and act as a judge in his own case.

42. Punishments.—The only punishments which can be inflicted upon its members by a deliberative assembly of the kind now under consideration consist of reprimanding,—exclusion from the assembly,—a prohibition to speak or vote, for a specified time,—and expulsion; to which are to be added such other forms of punishment, as by apology, begging pardon, etc., as the assembly may see fit to impose, and to require the offender to submit to, on pain of expulsion.

CHAPTER IV.

Of the Introduction of Business.

43. How Business is Set in Motion.—The proceedings of a deliberative assembly, in reference to any particular subject, are ordinarily set in motion, in the first instance, by some one of the members either presenting a communication from persons not members, or

himself submitting a proposition to the assembly.

44. Communications.—Communications made to the assembly are of two kinds, namely, those which are merely for its information in matters of fact, and those which contain a request for some action on the part of the assembly, either of a general nature or for the benefit of an individual. The latter only, as they alone constitute a foundation for future proceedings, require to be noticed.

45. Motions.—Propositions made by members are drawn up and introduced, by motion, in the form which they are intended by the mover to bear, as orders, resolutions, or votes, if they should be adopted by the assembly. These propositions, of whatever nature they may be, are usually denominated motions, until they are adopted; they then take the name which properly belongs to them.

46. How to Obtain the Floor.—When a member has occasion to make any communication whatever to the assembly,—whether to present a petition or other paper, or to make or second a motion of any kind, or merely to make a verbal statement,—as well as when one desires to address the assembly in debate, he

must in the first place, as the expression is, "obtain the floor" for the purpose he has in view. In order to do this, he must rise in his place,* and, standing uncovered, address himself to the presiding officer by his title; the latter, on hearing himself thus addressed, calls to the member by his name; and the member may then, but not before, proceed with his business.

47. Conflicting Claims to Floor.—If two or more members rise and address themselves to the presiding officer at the same time, or nearly so, he should give the floor to the member whose voice he first heard. If his decision should not be satisfactory, any member may call it in question, saying that in his opinion such a member (not the one named) was first up, and have the sense of the assembly taken thereon, as to which of the members should be heard. In this case, the question should be

* In the House of Representatives of Massachusetts, where each member's seat is regularly assigned to him, and numbered, it has been found useful, in deciding upon the claims of several competitors for the floor, to prefer one who rises in his place to a member who addresses the speaker from the area, the passageways, or the seat of any other member.

first taken upon the name of the member announced by the presiding officer; and, if this question should be decided in the negative, then upon the name of the member for whom the floor was claimed in opposition to him.

48. Proceedings on Communications from Non-Members.—The mode of proceeding upon such communications from persons not members as are above alluded to may be explained by that adopted on the presentation of a petition, which may be considered as the representative of the whole class to which it belongs.

49. Petition.—A petition, in order to be received, should be subscribed by the petitioner himself, with his own hand, either by name or mark, except in case of inability from sickness, or because the petitioner is attending in person; and should be presented or offered, not by the petitioner himself, but by some member to whom it is intrusted for that purpose.

50. Statement of Substance of Petition.—The member who presents a petition should previously have informed himself of its contents, so as to be able to state the substance of it on offering it to the assembly, and also to be prepared to say, if any question should be

made, that in his judgment it is couched in proper language, and contains nothing intentionally disrespectful to the assembly.

51. Mode of Presenting Petition.—

Being thus prepared, the member rises in his place, with the petition in his hand, and informs the assembly that he has a certain petition, stating the substance of it, which he thereupon presents or offers to the assembly, and at the same time moves (which, however, may be done by any other member) that it be received; this motion being seconded, the question is put whether the assembly will receive the petition or not. This is the regular course of proceeding; but in practice there is seldom any question made on receiving a petition, the presiding officer usually taking it for granted that there is no objection to the reception, unless it be stated. If, however, any objection is made to a petition before it has been otherwise disposed of, the presiding officer ought to retrace his steps and require a motion of reception to be regularly made and seconded.

52. Action on Petition.—

If the question of reception is determined in the affirmative, the petition is brought up to the table by the member presenting it, and is there read as of course

by the clerk. It is then regularly before the assembly, to be dealt with as it thinks proper ; the usual course being either to proceed to consider the subject of it immediately, or to assign some future time for its consideration, or to order it to lie on the table for the examination and consideration of the members individually.

53. Motions and Resolutions.—Whenever a member introduces a proposition of his own, for the consideration of the assembly, he puts it into the form he desires it should have, and then moves that it be adopted as the resolution, order, or vote of the assembly. If this proposition so far meets the approbation of other members that one of them rises in his place and seconds it, it may then be put to the question ; and the result, whether affirmative or negative, becomes the judgment of the assembly.

54. Motion Must be in Writing.—A motion must be submitted in writing ; otherwise the presiding officer will be justified in refusing to receive it ; he may do so, however, if he pleases, and is willing to take the trouble himself to reduce it to writing. This rule extends only to principal motions, which, when adopted, become the act and express the sense

of the assembly ; but not to subsidiary or incidental motions,* which merely enable the assembly to dispose of the former in the manner it desires, and which are always in the same form. In the case of a motion to amend, which is a subsidiary motion, the rule admits of an exception, so far as regards the insertion of additional words, which, as well as the principal motion, must be in writing.

55. Motion Must be Seconded.—A motion must be seconded, that is, approved by some one member, at least, expressing his approval by rising and saying that he seconds the motion ; and if a motion be not seconded, no notice whatever is to be taken of it by the presiding officer ; though, in practice, very many motions, particularly those which occur in the ordinary routine of business, are admitted without being seconded. This rule applies as well to subsidiary as principal motions. The seconding of a motion seems to be required, on the ground that the time of the assembly ought not to be taken up by a question which, for anything that appears, has no one in its

* Such as, to adjourn,—lie on the table,—for the previous question,—for postponement,—commitment, etc.

favor but the mover. There are some apparent exceptions to this rule, which will be stated hereafter, in those cases in which one member alone has the right of instituting or giving direction to a particular proceeding; and an actual exception is sometimes made by a special rule requiring certain motions to be seconded by more than one member.

55 a. When Motion Need Not be Seconded.—At a meeting of shareholders of an English company a motion may be put by the chairman that has not been seconded. On one occasion Lord Justice James said: “In my opinion, if the chairman put the question without its having been either proposed or seconded by anybody, that would be perfectly good.”—[B.]*

56. Statement of Motion by Presiding Officer.—When a motion has been made and seconded, it is then to be stated by the presiding officer to the assembly, and thus becomes a question for its decision; and, until so stated, it is not in order for any other motion to be made, or for any member to speak of it; but, when moved, seconded, and stated from the

* Law-Rep., 11 Ch. Div., 110, 117.

chair, a motion is in the possession of the assembly, and cannot be withdrawn by the mover but by special leave of the assembly, which must be obtained by a motion made and seconded as in other cases.

56 a. Modification of Previous Rule.—

This rule has been modified in later practice. By the rule of the United States Senate, "any motion or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave of the Senate." By the rule of the House, a motion "may be withdrawn at any time before a decision or amendment." But after a motion has been amended, or any minor decision has been made thereon, it cannot be withdrawn by the mover without leave of the majority, ascertained in the regular manner.—[B.]

57. When Motion May be Debated.—

When a motion is regularly before the assembly, it is the duty of the presiding officer to state it, if it be not in writing, or to cause it to be read, if it be, as often as any member desires to have it stated or read for his information.

58. When Pending Motion Cuts Off Another Motion.—When a motion or proposition is regularly before the assembly, no other motion can be received, unless it be one which is previous in its nature to the question under consideration, and consequently entitled to take its place for the time being, and be first decided.

58 a. Proper Action When Presiding Officer Refuses to Put Motion. — Sometimes a presiding officer refuses to put a motion, either because he thinks it is out of order, illegal, or otherwise improper. One of these occasions was a meeting held by five trustees, at which a motion was made and seconded, but not put because the chairman declared that it was illegal. It was therefore put by the trustee who made the motion, and it received the vote of three of the five members, the other two refusing to vote. This was legal and affective.

The court remarked, “It is perhaps true that this presents a case of failure to pursue the practice which ordinarily obtains when persons gathered together as a body are acting as a body. But it cannot be said that every violation of parliamentary usage will annul the action of the body guilty of such irregularity.

The course of procedure rests largely with the discretion of the majority, provided the course adopted affords a reasonable guaranty that the sense of the body on the particular measure before it has been fairly taken. In large bodies, slight deviations from established practice might be fatal. But in smaller bodies,—one, for instance, composed of five members sitting around the same table, each under the eye and within reach of the voice of every other member,—a strict observance of all the formalities prescribed by parliamentary usages is not necessary.”*—[B.]

CHAPTER V.

Of Motions in General.

59. Subsidiary Motions.—When a proposition is made to a deliberative assembly for its adoption, the proposition may be in such a form as to be put to the question, and the assembly may be in such a state as to be willing

* 66 Northwestern Rep., 234, 243.

to come to a decision upon it at once ; and when this is the case, nothing more can be necessary than to take the votes of the members and ascertain the result. But a different state of things may and commonly does exist ; the assembly may prefer some other course of proceeding to an immediate decision of the question in the form in which it is presented ; and, as it is proper that every parliamentary body should have the means of fitly disposing of every proposition which may be made to it, certain forms of question have from time to time been invented, and are now in general use for that purpose. These forms of question may properly be called *subsidiary*, in order to distinguish them from the principal motion or question to which they relate.

60. Different Kinds of Subsidiary Motions.—The different states of mind in which a proposition may be received by a deliberative assembly, and the corresponding forms of proceeding, or subsidiary motions, to which they give rise, in order to ascertain the sense of the assembly, are the following :

First. The assembly may look upon the proposition as useless or inexpedient, and may therefore desire to suppress it, either for a time

or altogether. The subsidiary motions, for this purpose, are the previous question and indefinite postponement.

Second. The assembly may be willing to entertain and consider a proposition, but not at the time when it is made,—either because more information is wanted by the members individually, or because they desire further time for reflection and examination, or because the assembly is then occupied with some other matter which has more pressing claims upon its present attention. The usual motions, under such circumstances, are postponement to some future day or time, and to lie on the table.

Third. The subject-matter of a proposition may be regarded with favor, but the form in which it is introduced may be so defective that a more careful and deliberate consideration than can conveniently be given to it in the assembly itself may be necessary to put it into a satisfactory form. In this case, it is most proper to refer the proposition to a committee.

Fourth. The proposition may be acceptable, and the form in which it is presented so far satisfactory that the assembly may be willing to consider and act upon it, with such altera-

tions and amendments as may be thought proper. The motion adapted to this case is to amend.

61. Other Kinds of Subsidiary Motions.—It is not to be supposed that the subsidiary motions above specified are the only ones that have at any time been adopted or used, or that it is not competent for a deliberative assembly to frame new motions at pleasure; but these are the forms in most common use, and are entirely sufficient for all practical purposes.* Neither is it to be supposed that these motions are always applied strictly to the cases to which they most appropriately belong; several of them are frequently used to effect purposes for which others would be more proper. These misapplications will be taken notice of under the heads of the several motions.

* It is usual, in legislative assemblies, to specify the particular motions that are to be used, and the order in which they may be made. Thus, the rule in the House of Representatives of Congress is, that “when a question is under debate, no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit, to amend, to postpone indefinitely, which several motions shall have precedence in the order in which they are arranged.”

of the trustees whose seats became vacant at the election, if the election was fairly conducted and all who had the right to vote were present.¹³⁹

A stockholder who knows of the sale of a railroad in which he is interested and approves of it, though not legally notified of the meeting authorizing its sale and was not present, is bound thereby.¹⁴⁰ But a stockholder who, after receiving notice to attend a meeting called by the directors to consider their neglect of duty, decides not to go, is not thereby prevented from taking action against them by the stockholders who may attend and ratify the unauthorized acts of the directors.¹⁴¹

Likewise the stockholders of a corporation, to which money has been advanced for its use and benefit with the knowledge and approval of all the stockholders and officers, by such action dispense with formal notice

¹³⁹ *People v. Peck*, 11 Wend. 604 (1834).

¹⁴⁰ *Young v. Toledo & South Haven R. Co.*, 76 Mich. 485 (1889).

¹⁴¹ *McFadden v. Leeka*, 48 Ohio St. 513 (1891).

when the solicitor of the company told him that this could not be done, and that the original resolution must be put, and accepted or rejected. The original resolution was then passed, H. moving its rejection and voting against it. The court decided that the chairman was wrong in refusing to put the amendment, that H. was under no obligation to contest the ruling or to leave the meeting, but was justified in voting against the resolution, and that by doing so he had not acquiesced in the ruling, and was not prevented from taking action to have the proceedings set aside as improper.—[B.]

CHAPTER VI.

Of Motions to Suppress.

62. Previous Question and Indefinite Postponement.—When a proposition is moved which it is supposed may be regarded by the assembly as useless and inexpedient, and which it may therefore be desirous to get rid of, such proposition may be suppressed for a time by means of the previous question, or al-

together by a motion for indefinite postponement.

Sect. 1. Previous Question.

63. Use of Previous Question.—The original and proper parliamentary use of the previous question being, as above stated, the suppression of a main question, it seems proper to consider it as one of the subsidiary motions for that purpose; although, in this country, it has been perverted to a wholly different use, namely, the suppression of debate. This consideration, in connection with the difficulty of the subject, and the importance of a correct understanding of it, makes it proper to devote more room to the previous question than needs to be given to most of the other subsidiary motions. It will first be considered according to its original use and intention; and, afterwards, as used in this country.

64. Origin of Previous Question.—There are several motions which give rise to questions previous in their nature to other questions to which they relate; but the term *previous* has been applied exclusively to a motion denominated the *previous question*, which has for its object the suppression of a principal motion or question. This motion was intro-

duced into the House of Commons in England more than two centuries ago, for the purpose of suppressing subjects of a delicate nature relating to high personages, or the discussion of which might call forth observations of an injurious tendency. When first made use of, the form of motion was, *Shall the main question be put?* and the effect of a decision of it in the negative was to suppress the main question for the whole session. The form of it was afterwards changed to that which it has at present, namely, *Shall the main question be now put?* and the effect of a negative decision of it now is to suppress the main question for the residue of the day only. The operation of this motion in suppressing the question to which it is applied results from the principle that no further consideration or discussion can regularly be had of a subject which it has been decided shall not be put to the question; and, therefore, when on the motion of the previous question it has been decided that the principal question shall not now be put, that question is disposed of for the day, and cannot be renewed until the next or some succeeding day. This is the purpose for which the previous question was originally invented,

and for which it is still used in the British parliament.

65. Effect of Deciding Previous Question in the Negative.—But the previous question may be decided in the affirmative, as well as the negative, that is, that the main question shall now be put; in which case that question is to be put immediately, without any further debate, and in the form in which it then exists. This operation of the previous question, when decided affirmatively, has led to the use of it for the purpose of suppressing debate on a principal question, and coming to a vote on it immediately; and this is ordinarily the only object of the previous question as made use of in the legislative assemblies of the United States.* The operation of a negative decision is different in different assemblies; in some, as, for example, in the House of Representatives of Congress, it operates to dispose of the principal or main question by suppressing or removing it from before the house for the day;

* Mr. Jefferson (Manual, § xxxiv.) is of the opinion that “the uses of the previous question would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.”

but in others, as in the House of Representatives of Massachusetts, and in the House of Assembly of New York (in the former by usage only, and in the latter by a rule), the effect of a negative decision of the previous question is to leave the main question under debate for the residue of the sitting, unless sooner disposed of by taking the question, or in some other manner.

66. In England the previous question is used only for suppressing a main question; the object of the mover is to obtain a decision of it in the negative; and the effect of such a decision, though in strictness only to suppress the question for the day, is, practically and by parliamentary usage, to dispose of the subject altogether. In this country the previous question is used chiefly for suppressing debate on a main question; the object of the mover is to obtain a decision of it in the affirmative; and the effect of a decision the other way, though in some assemblies operating technically to suppress the main question for the day only, is, in general, merely to suspend the taking of the question for that day; either leaving the debate to go on during the residue of the day, or the subject to be renewed on the next or some other day. The operation of an affirmative

decision is the same in both countries, namely, the putting of the main question immediately and without further debate, delay, or consideration.

Sect. II. Indefinite Postponement.

67. Motion for Indefinite Postponement.—In order to suppress a question altogether, without coming to a direct vote upon it, in such a manner that it cannot be renewed, the proper motion is for indefinite postponement; that is, a postponement or adjournment of the question, without fixing any date for resuming it. The effect of this motion, if decided in the affirmative, is to quash the proposition entirely; as an indefinite adjournment is equivalent to a dissolution, or the continuance of a suit without day is a discontinuance of it. A negative decision has no effect whatever.

67 a. When this Motion Cannot be Made.—This motion cannot be made while any motion except the main question, either in its original or amended form, is pending. As the merits of the main question are still open for consideration on this motion, it is less useful for closing debate than a motion “that the question lie on the table.” The motion to indefinitely postpone cannot be amended.—[B.]

CHAPTER VII.

Of Motions to Postpone.

68. Motions to Postpone and Lay on Table.—If the assembly is willing to entertain and consider a question, but not at the time when it is moved, the proper course is either to postpone the subject to another day, or to order it to lie on the table.

69. Postponement to a Future Day.—When the members individually want more information than they possess at the time a question is moved, or desire further time for reflection and examination, the proper motion is to postpone the subject to such future day as will answer the views of the assembly.

70. Improper Use of Motion to Postpone.—This motion is sometimes used improperly, to get rid of a proposition altogether, as would be done by an indefinite postponement. This is effected by fixing upon a day which, according to the common course of things, will not arrive until after the assembly

has been brought to a close. But a motion worded in this manner is precisely equivalent to a motion for indefinite postponement, and should be so considered and treated.

70 a. When Motion to Postpone Can be Made.—A motion to postpone to a certain time can be made during the pendency of a motion to amend, commit, or postpone indefinitely. It is subject to amendment, and the previous question may be applied to it without affecting any other motion that may be pending. The time for postponing must not be beyond the life of that particular legislative body. Debate on this motion must be limited to such explanations as are needful for the members to judge of the propriety of passing it.—[B.]

71. Motion to Lay Matter on Table.—If the assembly has something else before it which claims its present attention, and is therefore desirous to postpone a particular proposition until that subject is disposed of, such postponement may be effected by means of a motion that the matter in question lie on the table. If this motion prevails, the subject so disposed of may be taken up at any time afterwards, and considered, when it may suit the convenience of the assembly.

72. Other Uses of Motion to Lay on Table.—This motion is also sometimes made use of for the final disposition of a subject; and it always has that effect, when no motion is afterwards made to take it up.

CHAPTER VIII.

Of Motions to Commit.

73. Motion to Commit.—The third case for the use of a subsidiary motion, as already stated, occurs when the subject-matter of a proposition is regarded with favor, but the form in which it is introduced is so defective that a more careful and deliberate consideration is necessary than can conveniently be given to it in the assembly itself, in order to put it into a satisfactory form. The course of proceeding then is to refer the subject to a committee, which is called a commitment, or, if the subject has already been in the hands of a committee, a recommitment.

74. Reference of Motion to Standing Committee.—If there is a standing commit-

tee of the assembly whose functions embrace the subject in question, the motion should be to refer it to that committee; if there is no such committee, then the motion should be to refer it to a select committee. If it is a matter of doubt whether a particular standing committee is appropriate or not, and propositions are made for a reference to that committee, and also for a reference to a select committee, the former proposition should be first put to the question.

75. Motion May be Without Instructions.—When a subject is referred or recommended, the committee may be instructed or ordered by the assembly as to any part or the whole of the duties assigned them, or the subject may be left with them without instructions. In the former case the instructions must be obeyed, of course; in the latter, the committee have full power over the matter, and may report upon it in any manner they please, provided they keep within the recognized forms of parliamentary proceedings.

76. Part May be Committed.—A part only of a subject may be committed, without the residue; or different parts may be committed to different committees.

77. Use of Motion to Commit with Instructions.—A commitment with instructions is sometimes made use of as a convenient mode of procuring information, and, at the same time, of postponing the consideration of a subject to a future though uncertain day.

CHAPTER IX.

Of Motions to Amend.

78. Motions to Amend.—The last case, for the introduction of subsidiary motions, is when the assembly is satisfied with the subject-matter of a proposition, but not with the form of it, or with all its different parts, or desires to make some addition to it. The course of proceeding then is to bring the proposition into the proper form and make its details satisfactory by means of amendments, or of certain proceedings of a similar character and having the same general purpose in view. The latter will be first considered.

Sect. I. Division of a Question.

79. Motion May be Divided.—When a proposition or motion is complicated, that is,

composed of two or more parts, which are so far independent of each other as to be susceptible of division into several questions, and it is supposed that the assembly may approve of some but not of all these parts, it is a compendious mode of amendment to divide the motion into separate questions, to be separately voted upon and decided by the assembly. This division may take place by the order of the assembly, on a motion regularly made and seconded for the purpose.

80. Divided Motion Becomes a Series of Questions.—When a motion is thus divided it becomes a series of questions, to be considered and treated, each by itself, as an independent proposition, in the order in which they stand ; and when they have all been gone through with and decided, the result will be the same as if motions to amend by striking out the several parts had been made and put to the question. When a motion for a division is made, the mover ought to specify in his motion the manner in which he proposes to make the division ; and this motion, like ever other of the nature of an amendment, is itself susceptible of amendment.

81. Division of Question is Not a

Member's Right.—It is sometimes asserted that it is the right of every individual member to have a complicated question (provided it is susceptible of division) divided into its several parts, and a question put separately on each, on his mere demand, and without any motion or any vote of the assembly for that purpose. But this is a mistake ; there is no such rule of parliamentary proceeding ; a complicated question can only be separated by moving amendments to it in the usual manner, or by moving for a division of it in the manner above stated.

82. Rule for Dividing.—It is not unusual, however, for a deliberative assembly to have a rule providing for the division of a complicated question (provided it is susceptible of division) into its several parts upon the demand of a member. When this is the case, it is for the presiding officer (subject, of course, to the revision of the assembly) to decide, when the division of a motion is demanded, first, whether the proposition is susceptible of division, and, secondly, into how many and what parts it may be divided.

83. What Proposition Can be Divided.
—A proposition, in order to be divisible, must comprehend points so distinct and entire that,

if one or more of them be taken away, the others may stand entire and by themselves; but a qualifying paragraph, as, for example, an exception or a proviso, if separated from the general assertion or statement to which it belongs, does not contain an entire point or proposition.

Sect. II. Filling Blanks.

84. Blanks.—It often happens that a proposition is introduced with blanks purposely left by the mover to be filled by the assembly, either with times and numbers, or with provisions analogous to those of the proposition itself. In the latter case, blanks are filled in the same way that other amendments by the insertion of words are made. In the former, propositions to fill blanks are not considered as amendments to the question, but as original motions, to be made and decided before the principal question.

85. Motions to Fill.—When a blank is left to be filled with a time or number, motions may be made for that purpose, and the question taken on each by itself, and before another is made; or several motions may be made and pending before any of them are put to the

question. This last mode of proceeding, which is the most usual as well as convenient, requires that the several propositions should be arranged, and the question taken on them, in such order as will the soonest and with the most certainty enable the assembly to come to an agreement.

86. Order of Filling.—In determining upon the order to be adopted, the object is not to begin at that extreme which, and more being within every man's wish, no one can vote against it, and yet, if it should be carried in the affirmative, every question for more would be precluded, but at that extreme which will be likely to unite the fewest, and then to advance or recede until a number or time is reached which will unite a majority.

87. When Longest Time is First Put In.—Hence, when several different propositions are made for filling blanks with a time or number, the rule is that if the *larger* comprehends the *lesser*, as in a question to what day a postponement shall take place,—the number of which a committee shall consist,—the amount of a fine to be imposed,—the term of an imprisonment,—the term of irredeemability of a loan,—or the *terminus in quem* in any other case, the question must begin *a maximo*, and

be first taken upon the greatest or farthest, and so on to the least or nearest, until the assembly comes to a vote ; but, if the *lesser* includes the *greater*, as in questions on the limitation of the rate of interest,—on the amount of a tax,—on what day the session of a legislative assembly shall be closed by adjournment,—on what day the next session shall commence,—or the *terminus a quo* in any other case, the question must begin *a minimo*, and be first taken on the least or nearest, and so on to the greatest or most remote, until the assembly comes to a vote.*

Sect. III. Addition,—Separation,— Transposition.

88. **Condensing.**—When the matters contained in two separate propositions might be better put into one, the mode of proceeding is to reject one of them, and then to incorporate

* In the Senate of the United States, the rule is, the **LARGEST** sum and **LONGEST** time shall be first put. In the House of Commons, in England, the rule established by usage is, that the **SMALLEST** sum and the **LONGEST** time shall be first put.

the substance of it with the other by way of amendment. A better mode, however, if the business of the assembly will admit of its being adopted, is to refer both propositions to a committee, with instructions to incorporate them together in one.

89. Distributing.—So, on the other hand, if the matter of one proposition would be more properly distributed into two, any part of it may be struck out by way of amendment, and put into the form of a new and distinct proposition. But in this, as in the former case, a better mode would generally be to refer the subject to a committee.

90. Transposition.—In like manner, if a paragraph or section requires to be transposed, a question must be put on striking it out where it stands, and another for inserting it in the place desired.

91. Numbering Sections, etc.—The numbers prefixed to the several sections, paragraphs or resolutions which constitute a proposition are merely marginal indications, and no part of the text of the proposition itself; and, if necessary, they may be altered or regulated by the clerk, without any vote or order of the assembly

Sect. IV. Modification of Amendment by the Mover.

92. Amending Motion.—The mover of a proposition is sometimes allowed to modify it, after it has been stated as a question by the presiding officer ; but, as this is equivalent to a withdrawal of the motion, in order to substitute another in its place, and since, as has already been seen, a motion regularly made, seconded, and proposed, cannot be withdrawn without leave, it is clear that the practice alluded to rests only upon general consent ; and that, if objected to, the mover of a proposition must obtain the permission of the assembly, by a motion and question, for the purpose, in order to enable him to modify his proposition.

93. Acceptance of Amendment.—So, too, when an amendment has been regularly moved and seconded, it is sometimes the practice for the mover of the proposition to which it relates to signify his consent to it, and for the amendment to be thereupon made, without any question being taken upon it by the assembly. As this proceeding, however, is essentially the same with that described in the preceding paragraph, it of course rests upon

the same foundation, and is subject to the same rule.

Sect. V. General Rules Relating to Amendments.

94. Different Forms of Amendments.

—All amendments, of which a proposition is susceptible, so far as form is concerned, may be effected in one of three ways, namely : either by inserting or adding certain words ; or by striking out certain words ; or by striking out certain words and inserting or adding others. These several forms of amendment are subject to certain general rules, which, being equally applicable to them all, require to be stated beforehand.

95. Numerical Sequence.—*First Rule.*

When a proposition consists of several sections, paragraphs, or resolutions, the natural order of considering and amending it is to begin at the beginning, and to proceed through it in course by paragraphs ; and when a latter part has been amended, it is not in order to recur back and make any alteration or amendment of a former part.

96. Limitation of Amendment.—*Second Rule.* Every amendment which can be pro-

posed, whether by striking out, or inserting, or striking out and inserting, is itself susceptible of amendment ; but there can be no amendment of an amendment to an amendment ; this would be such a piling of questions one upon another as would lead to great embarrassment ; and as the line must be drawn somewhere, it has been fixed by usage after the amendment to the amendment. The object which is proposed to be effected by such a proceeding must be sought by rejecting the amendment to the amendment in the form in which it is proposed, and then moving it again in the form in which it is wished to be amended, in which it is only an amendment to an amendment ; and, in order to accomplish this, he who desires to amend an amendment should give notice that, if rejected in the form in which it is presented, he shall move it again in the form in which he desires to have it adopted.

97. Rule Explained.—Thus, if a proposition consists of A B, and it is proposed to amend by inserting C D, it may be moved to amend the amendment by inserting E F ; but it cannot be moved to amend this amendment, as, for example, by inserting G. The only

mode by which this can be reached is to reject the amendment in the form in which it is presented, namely, to insert E F, and to move it in the form in which it is desired to be amended, namely, to insert E G F.

98. Agreement of Assembly Cannot be Amended.—*Third Rule.* Whatever is agreed to by the assembly, on a vote, either adopting or rejecting a proposed amendment, cannot be afterwards altered or amended.

99. Rule Explained.—Thus, if a proposition consists of A B, and it is moved to insert C; if the amendment prevail, C cannot be afterwards amended, because it has been agreed to in that form; and so, if it is moved to strike out B, and the amendment is rejected, B cannot afterwards be amended, because a vote against striking it out is equivalent to a vote agreeing to it as it stands.

100. Disagreement Cannot be Moved Again.—*Fourth Rule.* Whatever is disagreed to by the assembly, on a vote, cannot be afterwards moved again. This rule is the converse of the preceding, and may be illustrated in the same manner.

101. Rule Explained.—Thus, if it is moved to amend A B by inserting C, and the

amendment is rejected, C cannot be moved again; or, if it is moved to amend A B by striking out B, and the amendment prevails, B cannot be restored, because in the first case C, and in the other B, have been disagreed to by a vote.

102. Inconsistency.—*Fifth Rule.* The inconsistency or incompatibility of a proposed amendment with one which has already been adopted is a fit ground for its rejection by the assembly, but not for the suppression of it by the presiding officer as against order; for, if questions of this nature were allowed to be brought within the jurisdiction of the presiding officer as matters of order, he might usurp a negative on important modifications, and suppress or embarrass instead of subserving the will of the assembly.

Sect. VI. Amendments by Striking Out.

103. Striking Out Amendments.—If an amendment is proposed by striking out a particular paragraph or certain words, and the amendment is rejected, it cannot be again moved to strike out the same words or a part of them; but it may be moved to strike out the same words with others. or to strike out a

part of the same words with others, provided the coherence to be struck out be so substantial as to make these, in fact, different propositions from the former.

104. Rule Explained.—Thus, if a proposition consist of A B C D, and it is moved to strike out B C, if this amendment is rejected it cannot be moved again ; but it may be moved to strike out A B, or A B C, or B C D or C D.

105. Agreement to Strike Out.—If an amendment by striking out is agreed to, it cannot be afterwards moved to insert the same words struck out, or a part of them ; but it may be moved to insert the same words with others, or a part of the same words with others, provided the coherence to be inserted make these propositions substantially different from the first.

106. Rule Explained.—Thus, if the proposition A B C D is amended by striking out B C, it cannot be moved to insert B C again ; but it may be moved to insert B C with other words, or B with others, or C with others.

107. How Motion to Strike Out May be Amended.—When it is proposed to amend by striking out a particular paragraph, it may be moved to amend this amendment in three different ways, namely ; either by striking out

a part only of the paragraph, or by inserting or adding words, or by striking out and inserting.

108. Rule Explained.—Thus, if it is moved to amend the proposition A B C D by striking out B C, it may be moved to amend this amendment by striking out B only, or C only, or by inserting E, or by striking out B or C and inserting E.

109. When Motion to Retain Amended Paragraph Must be Made if Motion to Strike Out is Pending.—In the case of a proposed amendment by striking out, the effect of voting upon it, whether it be decided in the affirmative or negative according to the third and fourth rules above mentioned, renders it necessary for those who desire to retain the paragraph to amend it, if any amendment is necessary, before the vote is taken on striking out; as, if struck out, it cannot be restored, and if retained it cannot be amended.

110. Precedence of Motions to Amend.—As an amendment must necessarily be put to the question before the principal motion, so the question must be put on an amendment to an amendment before it is put on the amendment; but, as this is the extreme limit to which motions may be put upon one another, there

can be no precedence of one over another among amendments to amendments, and, consequently, they can only be moved one at a time, or, at all events, must be put to the question in the order in which they are moved.

III. Form of Motions to Strike Out.—

When a motion for striking out words is put to the question, the parliamentary form always is, whether the words *shall stand as part* of the principal motion, and not whether they *shall be struck out*. The reason for this form of stating the question probably is that the question may be taken in the same manner on a part as on the whole of the principal motion, which would not be the case if the question was stated on striking out; inasmuch as the question on the principal motion, when it comes to be stated, will be on agreeing to it, and not on striking out or rejecting it. Besides, as an equal division of the assembly would produce a different decision of the question, according to the manner of stating it, it might happen, if the question on the amendment was stated on striking out, that the same question would be decided both affirmatively and negatively by the same vote.*

* The common mode of stating the question in the legislative assemblies of this country is on “striking out.”

112. Mode of Stating Motion to Strike Out.—On a motion to amend by striking out certain words, the manner of stating the question is, first to read the passage proposed to be amended as it stands ; then the words proposed to be struck out ; and, lastly, the whole passage as it will stand if the amendment is adopted.

Sect. VII. Amendments by Inserting.

113. Insertion of Rejected Amendment.—If an amendment is proposed by inserting or adding a paragraph or words, and the amendment is rejected, it cannot be moved again to insert the same words or a part of them ; but it may be moved to insert the same words with others, or a part of the same words with others, provided the coherence really make them different propositions.

114. Rule Explained.—Thus, if it is moved to amend the proposition A B by inserting C D, and the amendment is rejected, C D cannot be again moved ; but it may be moved to insert C E, or D E, or C D E.

115. Agreeing to Motion to Insert.—If it is proposed to amend by inserting a paragraph, and the amendment prevails, it cannot be afterwards moved to strike out the same

words or a part of them ; but it may be moved to strike out the same words with others,* or a part of the same words with others, provided the coherence be such as to make these propositions really different from the first.

116. Rule Explained.—Thus, if, in the example above supposed, the amendment prevails and C D is inserted, it cannot be afterwards moved to strike out C D, but it may be moved to strike out A C or A C D, or D B or C D B.

117. Different Motions to Insert.—When it is proposed to amend by inserting a paragraph, this amendment may be amended in three different ways, namely: either by striking out a part of the paragraph, or by inserting something into it, or by striking out and inserting.

118. Rule Explained.—Thus, if it is proposed to amend A B by inserting C D, this amendment may be amended either by striking out C or D, or inserting E, or by striking out C or D and inserting E.

119. Amending Motion to Insert.—When it is proposed to amend by inserting a

* This is the common case of striking out a paragraph after having amended it by inserting words.

paragraph, those who are in favor of the amendment should amend it, if necessary, before the question is taken; because, if it is rejected, it cannot be moved again, and if received it cannot be amended.

120. No Priority in Amendments.—There is no precedence of one over another in amendments to amendments by inserting, any more than in amendments to amendments by striking out.

121. Mode of Stating Question.—On a motion to amend by inserting a paragraph, the manner of stating the question is, first, to read the passage to be amended, as it stands; then the words proposed to be inserted; and, lastly, the whole passage as it will stand if the amendment prevails.

Sect. VIII. Amendments by Striking Out and Inserting.

122. Motion to Strike Out and Insert.—The third form of amending a proposition, namely, by striking out certain words and inserting others in their place, is, in fact, a combination of the other two forms, and may accordingly be divided into those two forms, either by a vote of the assembly or on the de-

mand of a member, under a special rule to that effect.

123. Proceedings When Motion is Divided.—If the motion is divided, the question is first to be taken on striking out ; and if that is decided in the affirmative, then on inserting ; but if the former is decided in the negative, the latter falls, of course. On a division the proceedings are the same in reference to each branch of the question, beginning with the striking out, as if each branch had been moved by itself.

124. Proceedings When Motion to Strike Out and Insert is Not Divided.—If the motion to strike out and insert is put to the question undivided, and is decided in the negative, the same motion cannot be made again ; but it may be moved to strike out the same words, and, 1, insert nothing ; 2, insert other words ; 3, insert the same words with others ; 4, insert a part of the same words with others ; 5, strike out the same words with others, and insert the same ; 6, strike out a part of the same words with others, and insert the same ; 7, strike out other words and insert the same ; and, 8, insert the same words without striking out anything.

125. Effect of Affirmative Decision of Motion to Strike Out and Insert.—

If the motion to strike out and insert is decided in the affirmative, it cannot be then moved to insert the words struck out, or a part of them, or to strike out the words inserted, or a part of them; but it may be moved, 1, to insert the same words with others; 2, to insert a part of the same words with others; 3, to strike out the same words with others; or, 4, to strike out a part of the same words with others.

126. How Motion to Amend by Striking Out and Inserting May be Amended.

—When it is proposed to amend by striking out and inserting, this amendment may be amended in three different ways in the paragraph proposed to be struck out, and also in the paragraph proposed to be inserted, namely, by striking out, or inserting, or striking out and inserting. And those who are in favor of either paragraph must amend it before the question is taken, for the reasons already stated, namely, that if decided in the affirmative, the part struck out cannot be restored, nor can the part inserted be amended; and if decided in the negative, the part proposed to be struck out cannot

be amended, nor can the paragraph proposed to be inserted be moved again.

127. Mode of Stating Motion to Amend by Striking Out and Inserting.—On a motion to amend by striking out certain words and inserting others, the manner of stating the question is first to read the whole passage to be amended, as it stands ; then the words proposed to be struck out ; and, lastly, the whole passage as it will stand when amended.

Sect. IX. Amendments Changing the Nature of a Question.

128. Who May Make Motion to Amend.—The term “amendment” is in strictness applicable only to those changes of a proposition by which it is improved, that is, rendered more effectual for the purpose which it has in view, or made to express more clearly and definitely the sense which it is intended to express. Hence it seems proper that those only should undertake to amend a proposition who are friendly to it ; but this is by no means the rule. When a proposition is regularly moved and seconded, it is in the possession of the assembly [*Par.* 56, 92, *V.*], and cannot be withdrawn but by its leave ; it has then become the

basis of the future proceedings of the assembly, and may be put into any shape and turned to any purpose that the assembly may think proper.

129. How Far an Amendment May Go.—It is consequently allowable to amend a proposition in such a manner as entirely to alter its nature, and to make it bear a sense different from what it was originally intended to bear, so that the friends of it, as it was first introduced, may themselves be forced to vote against it in its amended form.

130. Rule Explained.—This mode of proceeding is sometimes adopted for the purpose of defeating a proposition by compelling its original friends to unite with those who are opposed to it in voting for its rejection. Thus, in the British House of Commons, January 29, 1765, a resolution being moved, “That a general warrant for apprehending the authors, printers, or publishers of a libel, together with their papers, is not warranted by law, and is an high violation of the liberty of the subject:”—it was moved to amend this motion by prefixing the following paragraph, namely: “That in the particular case of libels it is proper and necessary to fix, by a vote of this House only,

what ought to be deemed the law in respect of general warrants ; and for that purpose, at the time when the determination of the legality of such warrants, in the instance of a most seditious and treasonable libel, is actually depending before the courts of law, for this House to declare''—*that a general warrant for apprehending the authors, printers, or publishers of a libel, together with their papers, is not warranted by law, and is an high violation of the liberty of the subject.* The amendment was adopted after a long debate, and then the resolution as amended was immediately rejected without a division.

131. Effect of Amendment.—But sometimes the nature of a proposition is changed by means of amendments, with a view to its adoption in a sense the very opposite of what it was originally intended to bear. The following is a striking example of this mode of proceeding. In the House of Commons, April 10, 1744, a resolution was moved, declaring "That the issuing and paying to the Duke of Aremberg the sum of forty thousand pounds, sterling, to put the Austrian troops in motion in 1742, was a dangerous misapplication of public money, and destructive of the rights of

parliament." The object of this resolution was to censure the conduct of the ministers; and the friends of the ministry, being in a majority, might have voted directly upon the motion and rejected it. But they preferred to turn it into a resolution approving of the conduct of ministers on the occasion referred to; and it was accordingly moved to amend by leaving out the words "a dangerous misapplication," etc., to the end of the motion, and inserting instead thereof the words "necessary for putting the said troops in motion, and of great consequence to the common cause." The amendment being adopted, it was resolved (reversing the original proposition) "That the issuing and paying to the Duke of Aremberg the sum of forty thousand pounds, to put the Austrian troops in motion, in the year 1742, was necessary for putting the said troops in motion, and of great consequence to the common cause."

132. Amendment a Mode of Defeating Proposition.—It is a mode of defeating a proposition somewhat similar to that above mentioned to carry out or extend the principle of it, by means of amendments, so as to show the inconvenience, absurdity or danger of its

adoption, with such evident clearness that it becomes impossible for the assembly to agree to it. Thus, a motion having been made in the House of Commons "for copies of all the letters written by the lords of the admiralty to a certain officer in the navy," it was moved to amend the motion by adding these words:—"which letters may contain orders, or be relative to orders not executed and still subsisting." This amendment being adopted, the motion as amended was unanimously rejected.

133. What Matters May be Added by Amendment.—It will be seen, from the foregoing examples, that as the mover of a proposition is under no restriction as to embracing incongruous matters under the same motion, so, on the other hand, the assembly may engraft upon a motion, by way of amendment, matter which is not only incongruous with but entirely opposed to the motion as originally introduced; and in legislative assemblies it is not unusual to amend a bill by striking out all after the enacting clause and inserting an entirely new bill, or to amend a resolution by striking out all after the words "Resolved that" and inserting a proposition of a wholly different tenor.

CHAPTER X.

Of the Order and Succession of Questions.

134. **Questions that Can be Taken Up Before Main Question.**—It is a general rule that, when a proposition is regularly before a deliberative assembly for its consideration, no other proposition or motion can regularly be made or arise so as to take the place of the former, and be first acted upon, unless it be either, *first*, a privileged question ; *secondly*, a subsidiary question ; or, *thirdly*, an incidental question or motion.

135. **They Take Place of Main Question.**—All these motions take the place of the principal motion, or main question, as it is usually called, and are to be first put to the question ; and among themselves, also, there are some which, in like manner, take the place of all the others. Some of these questions merely supersede the principal question until they have been decided ; and, when decided,

whether affirmatively or negatively, leave that question as before. Others of them also supersede the principal question until they are decided, and, when decided one way, dispose of the principal question ; but if decided the other way, leave it as before.

Sect. I. Privileged Questions.

136. **Privileged Questions.**—There are certain motions or questions which, on account of the superior importance attributed to them, either in consequence of a vote of the assembly, or in themselves considered, or of the necessity of the proceedings to which they lead, are entitled to take the place of any other subject or proposition which may then be under consideration, and to be first acted upon and decided by the assembly. These are called privileged questions, because they are entitled to precedence over other questions, though they are of different degrees among themselves. Questions of this nature are of three kinds, namely: *first*, motions to adjourn ; *secondly*, motions or questions relating to the rights and privileges of the assembly, or of its members individually ; and, *thirdly*, motions for the orders of the day.

Adjournment.

137. Motion to Adjourn.—A motion to adjourn takes the place of all other questions whatsoever, for otherwise the assembly might be kept sitting against its will and for an indefinite time ; but in order to entitle this motion to precedence, it must be simply to “adjourn,” without the addition of any particular day or time. And as the object of this motion, when made in the midst of some other proceeding, and with a view to supersede a question already proposed, is simply to break up the sitting, it does not admit of any amendment by the addition of a particular day, or in any other manner ; though, if a motion to adjourn is made when no other business is before the assembly, it may be amended like other questions.

137 a. When a Motion to Adjourn is Not in Order.—The common saying that a motion to adjourn is always in order is not quite true. Such a motion may be made unless the assembly has just decided against it, or has already fixed the time for the presiding officer to declare an adjournment, or is considering the time or place of the next meeting, or is engaged in voting, or a member is speaking. When made frequently, after the assembly has

repeatedly refused to adjourn, and for the purpose of hindering business, the presiding officer is justified in treating it as frivolous and out of order.—[B.]

137 b. Motion to Adjourn is Not Debatable.—If the motion is simply to adjourn, it is not debatable, nor subject to any subsidiary motion. But if another element is added to the motion,—for example, that the meeting adjourn to a specified time, or *sine die*,—it would be susceptible of division, and in that case would be debatable.—[B.]

138. How Motion to Adjourn Should be Put.—A motion to adjourn is merely “that this assembly do now adjourn;” and, if it is carried in the affirmative, the assembly is adjourned to the next sitting day, unless it has previously come to a resolution that, on rising, it will adjourn to a particular day, in which case it is adjourned to that day.

138 a. How Presiding Officer Should State Vote.—When the question has been voted, the presiding officer should first say, “The ayes,” or “the noes,” as the case may be, “seem to have it,” unless the entire vote is one way; otherwise, if he should declare the assembly adjourned when the members

doubted that such action had been taken, there would be no corrective. Having made the above-mentioned declaration, he should announce his decision, if no division or other test of the action of the members is demanded.

138 b. Effect of Chairman's Conduct in Declining to Put Motion.—An article of association provided that “the chairman may, with the consent of the members present at any meeting, adjourn the same. At a meeting a motion for adjournment was made and seconded, but the chairman declined to put the motion, and in considering the propriety of his conduct the court declared that the chairman was not bound to adjourn the meeting even though a majority of those present desired an adjournment. It was contended that there was an inherent power in any meeting to determine on an adjournment if it pleased, and that it was the duty of the chairman to put any motion for that purpose made and seconded. But this power, so the court maintained, was not possessed in those cases in which articles have expressly prescribed the conditions under which an adjournment may take place. In the above case the court remarked that the article vested in the chair-

man large powers which might conceivably be used improperly by him; but, on the other hand, if there were no check upon the power of those present at a meeting to adjourn it to a future date, it was equally conceivable that a small minority of the shareholders might seriously prejudice the interests of the company and defy the wishes of the majority of its members.*

139. Effect of Adjournment Without Day.—An adjournment without day, that is, without any time being fixed for reassembling, would, in the case of any other than a legislative assembly, be equivalent to a dissolution.

140. Effect of Adjournment on Pending Question.—When a question is interrupted by an adjournment before any vote or question has been taken upon it, it is thereby removed from before the assembly, and will not stand before it, as a matter of course, at its next meeting, but must be brought forward in the usual way.

Questions of Privilege.

141. What These Are.—The questions next in relative importance, and which super-

* Law Rep. App. Cases, 1897, 268.

sede all others for the time being except that of adjournment, are those which concern the rights and privileges of the assembly, or of its individual members ; as, for example, when the proceedings of the assembly are disturbed or interrupted, whether by strangers or members ; or where a quarrel arises between two members ; and in these cases the matter of privilege supercedes the question pending at the time, together with all subsidiary and incidental ones, and must be first disposed of. When settled, the question interrupted by it is to be resumed at the point where it was suspended.

Orders of the Day.

142. What These Are.—When the consideration of a subject has been assigned for a particular day by an order of the assembly, the matter so assigned is called the order of the day for that day. If, in the course of business, as commonly happens in legislative assemblies, there are several subjects assigned for the same day, they are called the orders of the day.

143. Their Precedence.—A question which is thus made the subject of an order for its consideration on a particular day is thereby made a privileged question for that day ; the

order being a repeal, as to this special case, of the general rule as to business. If, therefore, any other proposition (with the exception of the two preceding) is moved or arises on the day assigned for the consideration of a particular subject, a motion for the order of the day will supersede the question first made, together with all subsidiary and incidental questions connected with it, and must be first put and decided; for if the debate or consideration of that subject were allowed to proceed it might continue through the day, and thus defeat the order.

144. A Motion to Proceed to Orders of the Day Must be General.—But this motion, to entitle it to precedence, must be for the orders generally, if there is more than one, and not for any particular one; and if decided in the affirmative, that is, that the assembly will now proceed to the orders of the day, they must then be read and gone through with in the order in which they stand; priority of order being considered to give priority of right.

145. When Motion to Proceed to Order of the Day is Privileged.—If the consideration of a subject is assigned for a particular hour on the day named, a motion to proceed

to it is not a privileged motion until that hour has arrived ; but, if no hour is fixed, the order is for the entire day and every part of it.

146. Priority of Orders.—Where there are several orders of the day, and one of them is fixed for a particular hour, if the orders are taken up before that hour they are to be proceeded with as they stand until that hour, and then the subject assigned for that hour is the next in order ; but, if the orders are taken up at that time or afterwards, that particular subject must be considered as the first in order.

147. How Pending Question is Affected by Orders.—If the motion for the orders of the day is decided in the affirmative, the original question is removed from before the assembly in the same manner as if it had been interrupted by an adjournment, and does not stand before the assembly, as a matter of course, at its next meeting, but must be renewed in the usual way.

148. Effect of Negative Decision on Motion to Proceed With Orders.—If the motion is decided in the negative, the vote of the assembly is a discharge of the orders so far as they interfere with the consideration of the

subject then before it, and entitles that subject to be first disposed of.

149. Effect of Failure to Dispose of Orders.—Orders of the day, unless proceeded in and disposed of on the day assigned, fall, of course, and must be renewed for some other day. It may be provided, however, by a special rule, as in the legislative assemblies of Massachusetts, that the orders for a particular day shall hold for every succeeding day until disposed of.

Sect. II. Incidental Questions.

150. Definition of.—Incidental questions are such as arise out of other questions, and are consequently to be decided before the questions which give rise to them. Of this nature are, *first*, questions of order; *second*, motions for the reading of papers, etc.; *third*, leave to withdraw a motion; *fourth*, suspension of a rule; and, *fifth*, amendment of an amendment.

Questions of Order.

151. Enforcement of Questions of Order.—It is the duty of the presiding officer of a deliberative assembly to enforce the rules and orders of the body over which he presides

in all its proceedings, and this without question, debate or delay, in all cases in which the breach of order or the departure from rule is manifest. It is also the right of every member taking notice of the breach of a rule to insist upon the enforcement of it in the same manner.

152. Fact of Breach Must First be Determined.—But though no question can be made as to the enforcement of the rules when there is a breach or manifest departure from them, so long as any member insists upon their enforcement, yet questions may and do frequently arise as to the fact of there being a breach of order or a violation of the rules in a particular proceeding, and these questions must be decided before a case can arise for the enforcement of the rules. Questions of this kind are denominated questions of order.

153. Supersedes the Subject Out of Which it Arises.—When any question of this nature arises in the course of any other proceeding, it necessarily supersedes the further consideration of the subject out of which it arises until that question is disposed of; then the original motion or proceeding revives and resumes its former position, unless it has been itself disposed of by the question of order.

154. How Question of Order is Raised.

—When a question of order is raised, as it may be by any one member, it is not stated from the chair and decided by the assembly, like other questions, but is decided, in the first instance, by the presiding officer, without any previous debate or discussion by the assembly. If the decision of the presiding officer is not satisfactory, any one member may object to it, and have the question decided by the assembly. This is called *appealing* from the decision of the chair. The question is then stated by the presiding officer on the appeal, namely : *Shall the decision of the chair stand as the decision of the assembly ?* and it is thereupon debated and decided by the assembly in the same manner as any other question, except that the presiding officer is allowed to take a part in the debate, which, on ordinary occasions, he is prohibited from doing.

Reading Papers.

155. Reading Without Leave.—It is, for obvious reasons, a general rule that where papers are laid before a deliberative assembly for its action, every member has a right to have them once read at the table before he can be compelled to vote on them ; and, consequently,

when the reading of any paper relative to a question before the assembly is called for under this rule, no question need be made as to the reading; the paper is read by the clerk under the direction of the presiding officer, as a matter of course.

156. Reading With Leave.—But, with the exception of papers coming under this rule, it is not the right of any member to read himself, or to have read, any paper, book or document whatever, without the leave of the assembly, upon a motion made and a question put for the purpose. The delay and interruption which would otherwise ensue from reading every paper that might be called for, show the absolute necessity of restricting the rule within the narrowest possible limits consistently with permitting every member to have as much information as possible on the subjects in reference to which he is about to vote.

157. How Leave is Obtained.—When, therefore, a member desires that any paper, book or document on the table, whether printed or written (except as above mentioned), should be read for his own information or that of the assembly; or desires to read any such paper, book or document in his place in the course of

a debate, or otherwise ; or even to read his own speech, which he has prepared beforehand and committed to writing ; in all these cases, if any objection is made, he must obtain leave of the assembly for the reading by a motion and vote for the purpose.

158. Leave Rarely Refused.—When the reading of a paper is evidently for information, and not for delay, it is the usual practice for the presiding officer to allow of it, unless objection is made, in which case leave must be asked ; and this is seldom refused where there is no intentional or gross abuse of the time and patience of the assembly.

159. Member's Right to Insist on Reading.—It is not now the practice, as it once was in legislative assemblies, to read all papers that are presented, especially when they are referred to committees immediately on their presentation, though the right of every member to insist upon one reading is still admitted. It would be impossible, with the amount of business done by legislative bodies of the present day, to devote much of their time to the reading of papers.

160. Priority of Motion to Read a Paper.—When in the course of a debate or

other proceeding the reading of a paper is called for, and a question is made upon it, this question is incidental to the former, and must be first decided.

Withdrawal of a Motion.

161. When Motion Cannot be Withdrawn.—A motion, when regularly made, seconded, and proposed from the chair, is then in the possession of the assembly, and cannot be withdrawn by the mover, or directly disposed of in any manner but by a vote ; hence, if the mover of a question wishes to modify it, or to substitute a different one in its place, he must obtain the leave of the assembly for that purpose ; which leave can only be had, if objection is made, by a motion and question in the usual mode of proceeding.

162. Effect of Decision.—If this motion is decided in the affirmative, the motion to which it relates is thereby removed from before the assembly, as if it had never been moved ; if in the negative, the business proceeds as before.

Suspension of a Rule.

163. When a Rule is Suspended.—When any contemplated motion or proceeding

is rendered impracticable by reason of the existence of some special rule by which it is prohibited, it has become an established practice in this country to suspend or dispense with the rule for the purpose of admitting the proceeding or motion which is desired. This can only be done by a motion and question; and where this course is taken in order to a motion having reference to a proposition then under consideration, a motion to suspend the rule supercedes the original question for the time being, and is first to be decided.

164. Rules Providing for Suspension.

—It is usual, in the code of rules adopted by deliberative assemblies, and especially legislative bodies, to provide that a certain number exceeding a majority, as two-thirds or three-fourths, shall be competent to the suspension of a rule in a particular case; where this is not provided, there seems to be no other mode of suspending or dispensing with a rule than by general consent.

Amendment of Amendments.

165. Which Must be Put First.—In treating of amendments, it has already been seen that it is allowable to amend a proposed

amendment, and that the question on such sub-amendment must necessarily be put and decided before putting the question on the amendment. The former is incidental to the latter, and supersedes it for the time being.

Sect. III. Subsidiary Questions.

166. What Are.—Subsidiary, or secondary, questions or motions, as has already been stated, are those which relate to a principal motion, and are made use of to enable the assembly to dispose of it in the most appropriate manner. These motions have the effect to supersede, and in some cases, when decided one way, to dispose of the principal question. They are also of different degrees among themselves, and, according to their several natures, supersede, and sometimes dispose of, one another.

167. Names of.—The subsidiary motions in common use are the following, namely: lie on the table,—the previous question,—postponement, either indefinite or to a day certain,—commitment,—and amendment.

168. Are Applied Only to the Main Question.—It is a general rule, with certain exceptions which will be immediately men-

tioned, that subsidiary motions cannot be applied to one another ; as, for example, suppose a motion to postpone, commit or amend a principal question, it cannot be moved to suppress the motion to postpone, etc., by putting a previous question on it ; or, suppose the previous question is moved, or a commitment, or amendment, of a main question, it cannot be moved to postpone the previous question, or the motion for commitment or amendment. The reasons for this rule are : 1. It would be absurd to separate the appendage from its principal ; 2. It would be a piling of questions one on another, which, to avoid embarrassment, is not allowed ; and 3, the same result may be reached more simply by voting against the motion which it is attempted to dispose of by another secondary motion.

169. Exceptions.—The exceptions to the rule above stated are, that motions to postpone (either to a day certain or indefinitely), to commit, or to amend a principal question, may be amended, for the reason that the useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion ; that is, a subsidiary motion to carry out and improve another may be applied to that

other, but a subsidiary motion to dispose of or suppress another is not admissible. Hence the subsidiary motions above mentioned may be amended.

170. Previous Question Cannot be Amended.—A previous question, however, cannot be amended, the nature of it not admitting of any change. Parliamentary usage has fixed its form to be, Shall the main question be now put? that is, at this instant; and as the present instant is but one, it cannot admit of any modification, and to change it to the next day or any other moment is without example or utility. For the same reasons, also, that the form of it is fixed by parliamentary usage, and is already as simple as it can be, a motion to lie on the table cannot be amended.

Lie on the Table.

171. When Made.—This motion is usually resorted to when the assembly has something else before it which claims its present attention, and therefore desires to lay aside a proposition for a short but indefinite time, reserving to itself the power to take it up when convenient. This motion takes precedence of and supersedes all the other subsidiary motions.

171 a. When Made it Becomes the Only Question.—As soon as the motion is made it becomes the only question under consideration, all debate on whatever motion was before the body ceases, and the question must be immediately decided, for the motion is not debatable.—[B.]

172. Effect of Affirmative Decision.—If decided in the affirmative, the principal motion, together with all the other motions, subsidiary and incidental, connected with it, is removed from before the assembly until it is again taken up, which it may be, by motion and vote, at any time when the assembly pleases.

173. Effect of Negative Decision.—If decided in the negative, the business proceeds in the same manner as if the motion had never been made.

173 a. Motion to Table the Main Question Subject to Call.—A motion may be made to table the main question subject to call. Like the other motion to table, this is not debatable, but the effect is very different, for the motion tabled may be taken up for consideration, when the way is open, on the mere call of a member, and no motion is required for that purpose.—[B.]

Previous Question.

174. Relative Standing of Previous Question.—This motion has already been described, and the nature and effect of it fully stated. It stands in an equal degree with all the other subsidiary motions, except the motion to lie on the table ; and, consequently if first moved, is not subject to be superseded by a motion to postpone, commit or amend.

175. Effect of Previous Question.—If the previous question is moved before the others above mentioned, and put to the question, it has the effect to prevent those motions from being made at all ; for if decided affirmatively, to wit, that the main question shall now be put, it would of course be contrary to the decision of the assembly, and therefore against order, to postpone, commit, or amend ; and if decided negatively, to wit, that the main question shall not now be put, this takes the main question out of the possession of the assembly for the day, so that there is then nothing before it to postpone, commit or amend.

Postponement.

176. Amendment of Motion.—The motion to postpone is either indefinite or to a day

certain, and in both these forms may be amended ; in the former by making it to a day certain, in the latter by substituting one day for another. But, in the latter case, propositions to substitute different days for that originally named bear more resemblance to propositions for filling blanks than they do to amendments, and should be considered and treated accordingly.

177. Amendment May be to a Certain Day.—If, therefore, a motion is made for an indefinite postponement, it may be moved to amend the motion by making it to a day certain. If any other day is desired, it may be moved as an amendment to the amendment ; or it may be moved as an independent motion when the amendment has been rejected.

178. Motion to Postpone to Certain Day May be Amended.—If a motion is made for a postponement to a day certain, it may be amended by the substitution of a different day ; but in this case a more simple and effectual mode of proceeding is to consider the day as a blank, to be filled in the usual manner, beginning with the longest time.

179. Rank of Motion.—This motion stands in the same degree with motions for the

previous question,—to commit, and to amend ; and, if first made, is not susceptible of being superseded by them.

180. Effect of Decision of Motion.—

If a motion for postponement is decided affirmatively, the proposition to which it is applied is removed from before the assembly, with all its appendages and incidents, and consequently there is no ground for either of the other subsidiary motions ; if decided negatively, that the proposition shall not be postponed, that question may then be suppressed by the previous question, or committed or amended.

Commitment.

181. How it May be Amended.—A motion to commit, or recommit (which is the term used when the proposition has already been once committed), may be amended by the substitution of one kind of committee for another, or by enlarging or diminishing the number of the members of the committee as originally proposed, or by instructions to the committee.

181 a. Origin of.—A motion to commit is often the result of debate in which it appears that the bill under consideration is defective in form or substance, and a committal is desired

for the purpose of removing objections and making improvements. Such a motion is debatable, and involves the merits of the bill itself.—[B.]

182. Rank of Motion.—This motion stands in the same degree with the previous question and postponement ; and, if first made, is not superseded by them, but it takes precedence of a motion to amend.

183. Effect of Decision of Motion.—If decided affirmatively, the proposition is removed from before the assembly ; and consequently there is no ground for the previous question, or for the postponement, or amendment ; if negatively, to wit, that the principal question shall not be committed, that question may then be suppressed by the previous question, or postponed, or amended.

Amendment.

184. Rank of Motion.—A motion to amend, as has been seen, may be itself amended. It stands in the same degree only with the previous question and indefinite postponement, and neither, if first moved, is superseded by the other.

185. May be Superseded.—But this mo-

tion is liable to be superseded by a motion to postpone to a day certain ; so that, amendment and postponement competing, the latter is to be first put. The reason is, that a question for amendment is not suppressed by postponing or adjourning the principal question, but remains before the assembly whenever the main question is resumed ; for otherwise it might happen that the occasion for other urgent business might go by and be lost by length of debate on the amendment, if the assembly had no power to postpone the whole subject.

186. May be Superseded by Motion to Commit.—A motion to amend may also be superseded by a motion to commit ; so that the latter, though subsequently moved, is to be first put ; because, “in truth, it facilitates and be-friends the motion to amend.”

187. Effect of Decision.—The effect of both a negative and an affirmative decision of amendments has already been considered.

CHAPTER XI.

Of the Order of Proceeding.

188. When the Presiding Officer has Discretion.—When several subjects are before the assembly, that is, on their table for consideration (for there can be but a single subject *under* consideration at the same time), and no priority has been given to any one over another, the presiding officer is not precisely bound to any order as to what matters shall be first taken up, but left to his own discretion, unless the assembly on a question decide to take up a particular subject.

189. Fixed Order is Desirable.—A settled order of business, however, where the proceedings of an assembly are likely to last a considerable time, and the matters before it are somewhat numerous, is useful if not necessary for the government of the presiding officer, and to restrain individual members from calling up favorite measures, or matters under their special charge, out of their just time. It is also desirable for directing the discretion of the as-

sembly when a motion is made to take up a particular matter, to the prejudice of others, which are of right entitled to be first attended to in the general order of business.

190. How Order May be Established.

—The order of business may be established in virtue of some general rule, or by special orders relating to each particular subject, and must, of course, necessarily depend upon the nature and amount of the matters before the assembly.

191. Natural Order.—The natural order, in considering and amending any paper which consists of several distinct propositions, is to begin at the beginning and proceed through it by paragraphs; and this order of proceeding, if strictly adhered to, as it should always be in numerous assemblies, would prevent any amendment in a former part from being admissible after a latter part had been amended; but this rule does not seem to be so essential to be observed in smaller bodies, in which it may often be advantageous to allow of going from one part of a paper to another, for the purpose of amendments.

192. Exception to Natural Order.—To this natural order of beginning at the beginning there is one exception, according to parliamen-

tary usage, where a resolution or series of resolutions or other paper has a preamble or title; in which case the preamble or title is postponed until the residue of the paper is gone through with.

193. Consideration of a Several Paragraph Proposition.—In considering a proposition consisting of several paragraphs, the course is for the whole paper to be read entirely through, in the first place, by the clerk; then a second time by the presiding officer, by paragraphs, pausing at the end of each, and putting questions for amending, if amendments are proposed; and when the whole paper has been gone through with in this manner, the presiding officer puts the final question on agreeing to or adopting the whole paper as amended or unamended.

194. Order of Committee Reports.—When a paper which has been referred to a committee and reported back to the assembly is taken up for consideration, the amendments only are first read, in course, by the clerk. The presiding officer then reads the first and puts it to the question, and so on until the whole are adopted or rejected, before any other amendment is admitted, with the exception of an

amendment to an amendment. When the amendments reported by the committee have been thus disposed of, the presiding officer pauses and gives time for amendments to be proposed in the assembly to the body of the paper (which he also does if the paper has been reported without amendments, putting no questions but on amendments proposed); and when through the whole, he puts the question on agreeing to or adopting the paper as the resolution, order, etc., of the assembly.

195. Statement of Final Question.—

The final question is sometimes stated merely on the acceptance of the report, but a better form is on agreeing with the committee in the resolution, order, or whatever else the conclusion of the report may be, as amended, or without amendment, and the resolution or order is then to be entered in the journal as the resolution, etc., of the assembly, and not as the report of the committee accepted.

196. How Amended Report is to be Treated.—When the paper referred to a committee is reported back as amended, in a new draft (which may be, and often is, done where the amendments are numerous and comparatively unimportant), the new draft is to be con-

sidered as an amendment, and is to be first amended, if necessary, and then put to the question as an amendment reported by the committee ; or the course may be, first to accept the new draft as a substitute for the original paper, and then to treat it as such.

197. Several Questions Pending at the Same Time.—It often happens that, besides a principal question, there are several others connected with it pending at the same time, which are to be taken in their order ; as, for example, suppose, *first*, a principal motion ; *second*, a motion to amend ; *third*, a motion to commit ; *fourth*, the preceding motions being pending, a question of order arises in the debate, which gives occasion, *fifth*, to a question of privilege, and this leads, *sixth*, to a subsidiary motion, as to lie on the table. The regular course of proceeding requires the motion to lie on the table to be first put ; if this is negatived, the question of privilege is then settled ; after that comes the question of order, then the question of commitment ; if that is negatived, the question of amendment is taken, and, lastly, the main question. This example will sufficiently illustrate the manner in which questions may grow out of

one another, and in what order they are to be decided.

198. Question Must be Stated Before Action.—When a motion is made and seconded, it is the duty of the presiding officer to propose it to the assembly; until this is done it is not a question before the assembly to be acted upon or considered in any manner, and consequently it is not then in order for any member to rise either to debate it or to make any motion in relation to it whatever.

198 a. President Cannot Refuse to Put Motions.—The president of an association cannot prevent the transaction of business at a meeting by refusing to put motions, or by leaving the meeting. And if he does refuse or leave, the vice-president may put a motion which is properly made.*—[B.]

199. Principal and Subsidiary Motion Cannot be Stated Together.—It is therefore a most unparliamentary and abusive proceeding to allow a principal motion and a subsidiary one relating to it to be proposed and stated together, and to be put to the question in their order, as is done when a member

* 43 New York Supp., 852.

moves a principal question, a resolution, for example, and, at the same time, the previous question, or that the resolution lie on the table. In such a case the presiding officer should take no notice whatever of the subsidiary motion, but should propose the principal one by itself in the usual manner, before allowing any other to be made. Other members, then, would not be deprived of their rights of debate, etc., in relation to the subject moved.

200. Right to Floor.—When a member has obtained the floor he cannot be cut off from addressing the assembly on the question before it, nor, when speaking, can he be interrupted in his speech by any other member rising and moving an adjournment, or for the orders of the day, or by making any other privileged motion of the same kind; it being a general rule that a member in possession of the floor, or proceeding with his speech, cannot be taken down or interrupted but by a call to order; and, the question of order being decided, he is still to be heard through. A call for an adjournment, or for the orders of the day, or for the question, by gentlemen in their seats, is not a motion, as no motion can be made without rising and addressing the chair, and being

called to by the presiding officer. Such calls for the question are themselves breaches of order which, though the member who has risen may respect them as an expression of the impatience of the assembly at further debate, do not prevent him from going on if he pleases.

CHAPTER XII.

Of Order in Debate.

201. Difference Between Assembly and Forensic Debate.—Debate in a deliberative assembly must be distinguished from forensic debate, or that which takes place before a judicial tribunal; the former being, in theory, at least, more the expression of individual opinions among the members of the same body; the latter more a contest for victory, between the disputants, before a distinct and independent body; the former not admitting of replies, the latter regarding reply as the right of one of the parties.*

* An exception to this rule is sometimes made in favor of the mover of a question, who is allowed, at the close

202. Presiding Officer.—It is a general rule in all deliberative assemblies that the presiding officer shall not participate in the debate or other proceedings in any other capacity than as such officer. He is only allowed, therefore, to state matters of fact within his knowledge ; to inform the assembly on points of order or the course of proceeding when called upon for that purpose, or when he finds it necessary to do so ; and on appeals from his decision, on questions of order, to address the assembly in debate.

Sect. I. As to the Manner of Speaking.

203. Recognition of Member.—When a member desires to address the assembly on any subject before it (as well as to make a motion), he is to rise and stand up in his place, uncovered, and to address himself, not to the assembly, nor any particular member, but to the presiding officer, who, on hearing him, calls him by his name, that the assembly may take notice who it is that speaks, and give their at-

of the debate, to reply to the arguments brought against his motion ; but this is a matter of favor and indulgence, and not of right.

tion accordingly. If any question arises as to who shall be entitled to the floor where several members rise at or nearly at the same time, it is decided in the manner already described (46) as to obtaining the floor to make a motion.

204. Preference in Recognizing.—It is customary, indeed, for the presiding officer, after a motion has been made, seconded, and proposed, to give the floor to the mover,* in preference to others, if he rises to speak; or, on resuming a debate after an adjournment, to give the floor, if he desires it, to the mover of the adjournment in preference to other members; or, where two or more members claim the floor, to prefer him who is opposed to the measure in question; but in all these cases the determination of the presiding officer may be overruled by the assembly.

205. Floor Cannot be Given Up at all Without Losing It.—It is sometimes thought that when a member, in the course

* Sometimes a member, instead of proposing his motion at first, proceeds with his speech; but in such a case he is liable to be taken down to order, unless he states that he intends to conclude with a motion, and informs the assembly what that motion is, and then he may be allowed to proceed

of debate, breaks off his speech and gives up the floor to another for a particular purpose, he is entitled to it again, as of right, when that purpose is accomplished; but though this is generally conceded, yet when a member gives up the floor for one purpose he does so for all, and it is not possible for the presiding officer to take notice of and enforce agreements of this nature between members.

206. Mention of Names in Debate.—

No person, in speaking, is to mention a member then present by his name, but to describe him by his seat in the assembly, or as the member who spoke last, or last but one, or on the other side of the question, or by some other equivalent expression. The purpose of this rule is to guard as much as possible against the excitement of all personal feeling, either of favor or of hostility, by separating, as it were, the official from the personal character of each member, and having regard to the former only in the debate.

207. Presiding Officer.—If the presiding officer rises up to speak, any other member who may have risen for the same purpose ought to sit down, in order that the former may be first heard; but this rule does not authorize

the presiding officer to interrupt a member whilst speaking, or to cut off one to whom he has given the floor; he must wait, like other members, until such member has done speaking.

208. Member's Position While Speaking.—A member while speaking must remain standing in his place, uncovered, and when he has finished his speech he ought to resume his seat; but if unable to stand without pain or inconvenience, in consequence of age, sickness, or other infirmity, he may be indulged to speak sitting.

Sect. II. As to the Matter in Speaking.

209. Debate Must Relate to Question.—Every question that can be made in a deliberative assembly is susceptible of being debated, according to its nature; that is, every member has the right of expressing his opinion upon it. Hence it is a general rule, and the principal one relating to this matter, that in debate those who speak are to confine themselves to the question, and not to speak impertinently or beside the subject. So long as a member has the floor, and keeps within the rule, he may speak for as long a time as he pleases; though, if an uninteresting speaker trespasses too much upon

the time and patience of the assembly, the members seldom fail to show their dissatisfaction in some way or other, which induces him to bring his remarks to a close.

210. Indecent Language.—It is also a rule that no person, in speaking, is to use indecent language against the proceedings of the assembly, or to reflect upon any of its prior determinations, unless he means to conclude his remarks with a motion to rescind such determination ; but while a proposition under consideration is still pending, and not adopted, though it may have been reported by a committee, reflections on it are no reflections on the assembly. The rule applies equally to the proceedings of committees, which are, indeed, the proceedings of the assembly.

211. When Are Remarks Pertinent.—Another rule in speaking is that no member is at liberty to digress from the matter of the question, to fall upon the person of another, and to speak reviling, nipping, or unmannerly words of or to him. The nature or consequences of a measure may be reprobated in strong terms, but to arraign the motives of those who advocate it is a personality and against order.

212. Presumption in Favor of Pertinency.—It is very often an extremely difficult and delicate matter to decide whether the remarks of a member are pertinent or relevant to the question ; but it will, in general, be safe for the presiding officer to consider them so, unless they very clearly reflect, in an improper manner, either upon the person or motives of a member, or upon the proceedings of the assembly, or the member speaking digresses from or manifestly mistakes the question.

213. Subordinate Supersede Main Questions.—It often happens, in the consideration of a subject, that whilst the general question remains the same, the particular question before the assembly is constantly changing ; thus, while, for example, the general question is on the adoption of a series of resolutions, the particular question may at one moment be on an amendment ; at another on postponement ; and, again, on the previous question. In all these cases the particular question supersedes, for the time, the main question, and those who speak to it must confine their remarks accordingly. The enforcement of order in this respect requires the closest attention on the part of the presiding officer.

214. How Member Proceeds After Called to Order.—When a member is interrupted by the presiding officer, or called to order by a member for irrelevancy or departing from the question, a question may be made as to whether he shall be allowed to proceed in his remarks in the manner he was speaking when he was interrupted ; but if no question is made, or if one is made and decided in the negative, he is still to be allowed to proceed in order, that is, abandoning the objectionable course of remark.

Sect. III. As to Times of Speaking.

215. Member Can Speak Once.—The general rule in all deliberative assemblies, unless it is otherwise specially provided, is that no member shall speak more than once to the same question, although the debate on that question may be adjourned and continued through several days, and although a member who desires to speak a second time has, in the course of the debate, changed his opinion.

215 a. Rule in Congress.—The rule of the lower house of Congress is : “ No member shall speak more than once to the same question without leave of the House, unless he be

the mover, proposer, or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until every member choosing to speak shall have spoken."—[B.]

216. Previous Rule Construed.—This rule refers to the same question, technically considered; for if a resolution is moved and debated, and then referred to a committee, those who speak on the introduction of the motion may speak again on the question presented by the report of the committee, though it is substantially the same question with the former; and so, members who have spoken on the principal or main question may speak again on all the subsidiary or incidental questions arising in the course of the debate.

217. When He May Speak a Second Time.—The rule as to speaking but once on a question, if strictly enforced, will prevent a member from speaking a second time without the general consent of the assembly, so long as there is any other member who himself desires to speak; but when all who desire to speak have spoken, a member may speak a second time by leave of the assembly.

218. May Speak a Second Time to Explain.—A member may also be permitted

to speak a second time in the same debate, in order to clear a matter of fact, or merely to explain himself in some material part of his speech; or to the orders of the assembly, if they be transgressed (although no question may be made), but carefully keeping within that line and not falling into the matter itself.

219. How Long He Must Wait Before Explaining.—It is sometimes supposed that, because a member has a right to explain himself he therefore has a right to interrupt another member whilst speaking, in order to make the explanation; but this is a mistake. He should wait until the member speaking has finished; and if a member, on being requested, yields the floor for an explanation, he relinquishes it altogether.

Sect. IV. As to Stopping Debate.

220. Ordering of Previous Question Ends Debate.—The only mode in use in this country, until recently, for the purpose of putting an end to an unprofitable or tiresome debate, was by moving the previous question; the effect of which motion, as already explained, if decided in the affirmative, is to require the main or principal question to be immediately

taken. When this question is moved, therefore, it necessarily suspends all further consideration of the main question, and precludes all further debate or amendment of it; though, as has been seen, it stands in the same degree with postponement, amendment and commitment, and, unless in virtue of a special rule, cannot be moved while either of these motions is pending.

221. Assembly May Fix Time.—The other mode of putting an end to debate, which has recently been introduced into use, is for the assembly to adopt beforehand a special order in reference to a particular subject, that at such a time specified all debate upon it shall cease, and all motions or questions pending in relation to it shall be decided.

222. Speaking More than Once.—Another rule which has lately been introduced for the purpose of shortening rather than stopping debate is, that no member shall be permitted to speak more than a certain specified time on any question; so that, when the time allotted has expired, the presiding officer announces the fact, and the member speaking resumes his seat.

222 a. Closure in House of Commons.—In 1882 the House of Commons adopted an order allowing the Speaker when, in his judg-

ment, a subject had been fully considered, to inform the House that the question should be put. Until the adoption of this order the only limitation on debate was an order passed in 1604, "That if any man speak impertinently, or beside the question in hand, it stands with the orders of the House for the Speaker to interrupt him, and to have the pleasure of the House, whether they will further hear him." That speakers have long wished that there was some way of closing debate may be learned from Hatsell's *Precedents*, who describes one of the speakers as saying, after listening to a long debate: "I am tired, I am weary, I am heartily sick of this."*

Sect. V. As to Decorum in Debate.

223. Speaker Must Not be Disturbed.

—Every member having the right to be heard,

* In the lower House in Belgium, the President of the Chamber and Prime Minister consult concerning the advisability of *clôture*; in Denmark, if the President of the Danish Chamber thinks the debate has been improperly prolonged, he can propose the *clôture*, which is decided by the Chamber without debate; in Spain, the *clôture* may be moved by the President of the House. Dickinson's *Rules and Procedure of Foreign Parliaments*, 222, 102, 224, 266.

every other member is bound to conduct himself in such a manner that this right may be effectual. Hence it is a rule of order, as well as of decency, that no member is to disturb another in his speech by hissing, coughing, spitting; by speaking or whispering; by passing between the presiding officer and the member speaking; by going across the assembly-room, or walking up and down in it; or by any other disorderly deportment which tends to disturb or disconcert a member who is speaking.

224. When He Should Sit Down.—

But, if a member speaking finds that he is not regarded with that respectful attention which his equal right demands,—that it is not the inclination of the assembly to hear him,—and that by conversation or any other noise they endeavor to drown his voice,—it is his most prudent course to submit himself to the pleasure of the assembly, and to sit down; for it scarcely ever happens that the members of an assembly are guilty of this piece of ill manners without some excuse or provocation, or that they are so wholly inattentive to one who says anything worth their hearing.

225. Presiding Officer Must Maintain Order.—It is the duty of the presiding officer, in

such a case, to endeavor to reduce the assembly to order and decorum ; but if his repeated calls to order, and his appeals to the good sense and decency of the members, prove ineffectual, it then becomes his duty to call by name any member who obstinately persists in irregularity, whereupon the assembly may require such member to withdraw, who is then to be heard, if he desires it, in exculpation, and to withdraw ; then the presiding officer states the offence committed, and the assembly considers of the kind and degree of punishment to be inflicted.

226. When He May Permit Disorder.

—If, on repeated trials, the presiding officer finds that the assembly will not support him in the exercise of his authority, he will then be justified, but not till then, in permitting, without censure, every kind of disorder.

Sect. VI. As to Disorderly Words.

227. Offensive Language.—If a member, in speaking, makes use of language which is personally offensive to another, or insulting to the assembly, and the member offended, or any other, thinks proper to complain of it to the assembly, the course of proceeding is as follows :

228. How Offending Member Should be Treated.—The member speaking is immediately interrupted in the course of his speech by another or several members rising and calling to order, and the member who objects or complains of the words is then called upon by the presiding officer to state the words which he complains of, repeating them exactly as he conceives them to have been spoken, in order that they may be reduced to writing by the clerk; or the member complaining, without being so called upon, may proceed at once to state the words either verbally or in writing, and desire that the clerk may take them down at the table. The presiding officer may then direct the clerk to take them down; but if he sees the objection to be a trivial one, and thinks there is not foundation for their being thought disorderly, he will prudently delay giving any such directions, in order not unnecessarily to interrupt the proceedings, though, if the members generally seem to be in favor of having the words taken down by calling out to that effect, or by a vote, which the assembly may doubtless pass, the presiding officer should certainly order the clerk to take them down in the form and manner in

which they are stated by the member who objects.

229. Effect of Denying Offensive Language.—The words objected to being thus written down, and forming a part of the minutes in the clerk's book, they are next to be read to the member who was speaking, who may deny that those are the words which he spoke, in which case the assembly must decide by a question whether they are the words or not. If he does not deny that he spoke those words, or when the assembly has itself determined what the words are, then the member may either justify them or explain the sense in which he used them, so as to remove the objection of their being disorderly; or he may make an apology for them.

230. Explanation or Apology.—If the justification, or explanation, or apology, of the member is thought sufficient by the assembly, no further proceeding is necessary; the member may resume and go on with his speech, the assembly being presumed, unless some further motion is made, to be satisfied; but if any two members (one to make and the other to second the motion) think it necessary to state a question, so as to take the sense of the assembly

upon the words, and whether the member in using them has been guilty of any offence towards the assembly, the member must withdraw before that question is stated ; and then the sense of the assembly must be taken, and such further proceedings had in relation to punishing the member as may be thought necessary and proper.

231. Offensive Language Should be Written Down.—The above is the course of proceeding established by the writers of greatest authority, and ought invariably to be pursued ; it might, however, be improved by the member who objects to words writing them down at once, and thereupon moving that they be made a part of the minutes ; by which means the presiding officer would be relieved from the responsibility of determining, in the first instance, upon the character of the words.

232. Offensive Words Should be Noticed at Once.—If offensive words are not taken notice of at the time they are spoken, but the member is allowed to finish his speech, and then any other person speaks, or any other matter of business intervenes before notice is taken of the words which gave offence, the words are not to be written down, or the

member using them censured. This rule is established for the common security of all the members, and to prevent the mistakes which must necessarily happen if words complained of are not immediately reduced to writing.

CHAPTER XIII.

Of the Question.

233. **Difference Between Motion, Question, etc.**—When any proposition is made to a deliberative assembly, it is called a *motion*; when it is stated or propounded to the assembly for their acceptance or rejection, it is denominated a *question*; and, when adopted, it becomes the *order, resolution, or vote* of the assembly.

234. **Object of Prior Proceedings.**—All the proceedings which have thus far been considered have only had for their object to bring a proposition into a form to be put to the question, that is, to be adopted as the sense, will, or judgment of the assembly, or to be rejected, according as such proposition may

be found to unite in its favor, or to fail of uniting, a majority of the members.

235. Final Vote.—When any proposition, whether principal, subsidiary, or incidental, or of whatever nature it may be, is made, seconded, and stated, if no alteration is proposed, —or if it admits of none, or if it is amended, —and the debate upon it, if any, appears to be brought to a close, the presiding officer then inquires whether the assembly is ready for the question? and if no person rises the question is then stated, and the votes of the assembly taken upon it.

236. Statement of the Question.—The question is not always stated to the assembly in the precise form in which it arises or is introduced; thus, for example, when a member presents a petition, or the chairman of a committee offers a report, the question which arises, if no motion is made, is, *Shall the petition or the report be received?* and so, when the previous question is moved, it is stated in this form, *Shall the main question be now put?*—the question being stated, in all cases, in the form in which it will appear on the journal, if it passes in the affirmative.

236 a. Methods of Voting.—There are

several methods of voting: by silent assent, by voice, by a show of hands, by division, by roll-call or by yeas and nays, by ballot.—[B.]

237. Informal Consent.—In matters of trifling importance, or which are generally of course, such as receiving petitions and reports, withdrawing motions, reading papers, etc., the presiding officer most commonly supposes or takes for granted the consent of the assembly, where no objection is expressed, and does not go through the formality of taking the question by a vote. But if, after a vote has been taken in this informal way and declared, any member rises to object, the presiding officer should consider everything that has passed as nothing, and at once go back and pursue the regular course of proceeding. Thus, if a petition is received without a question, and the clerk is proceeding to read it, in the usual order of business, if any one rises to object, it will be the safest and most proper course for the presiding officer to require a motion for receiving it to be regularly made and seconded.

238. Putting of Final Question.—The question being stated by the presiding officer, he first puts it in the affirmative, namely: *As many as are of opinion that*—repeating the

words of the question,—*say aye*, and immediately all the members who are of that opinion answer *aye*; the presiding officer then puts the question negatively: *As many as are of a different opinion, say no*, and thereupon all the members who are of that opinion answer *no*. The presiding officer judges by his ear which side has “the more voices,” and decides accordingly that *the ayes have it*, or *the noes have it*, as the case may be. If the presiding officer is doubtful as to the majority of voices he may put the question a second time, and if he is still unable to decide, or if, having decided according to his judgment, any member rises and declares that he believes the *ayes* or the *noes* (whichever it may be) *have it*, contrary to the declaration of the presiding officer, then the presiding officer directs the assembly to divide, in order that the members on the one side and the other may be counted.

239. Division.—If, however, any new motion should be made after the presiding officer’s declaration, or if a member who was not in the assembly-room when the question was taken should come in, it will then be too late to contradict the presiding officer and have the assembly divided.

140. Mode of Voting.—The above is the parliamentary form of taking a question, and is in general use in this country ; but in some of our legislative assemblies, and especially in those of the New England States, the suffrages are given by the members holding up their right hands, first those in the affirmative, and then those in the negative, of the question. If the presiding officer cannot determine by the show of hands which side has the majority, he may call upon the members to vote again, and if he is still in doubt, or if his declaration is questioned, a division takes place. When the question is taken in this manner, the presiding officer directs the members, first on the affirmative side and then on the negative, to manifest their opinion by holding up the right hand.

241. Division by Count.—When a division of the assembly takes place, the presiding officer sometimes directs the members to range themselves on different sides of the assembly-room, and either counts them himself or they are counted by tellers appointed by him for the purpose, or by monitors permanently appointed for that and other purposes ; or the members rise in their seats, first on the affirma-

tive and then on the negative, and (standing uncovered) are counted in the same manner. When the members are counted by the presiding officer, he announces the numbers and declares the result. When they are counted by tellers or monitors, the tellers must first agree among themselves, and then the one who has taled for the majority reports the numbers to the presiding officer, who thereupon declares the result.

242. Division by Tellers.—The best method of dividing an assembly that is at all numerous is for the presiding officer to appoint tellers for each division or section of the assembly-room, and then to require the members, first those in the affirmative, and then those in the negative, to rise, stand uncovered, and be counted; this being done on each side, the tellers of the several divisions make their returns, and the presiding officer declares the result.

243. When Presiding Officer Can Vote.—If the members are equally divided the presiding officer may, if he pleases, give the casting vote; or, if he chooses, he may refrain from voting, in which case the motion does not prevail, and the decision is in the negative.

243 a. When Speaker Must Vote.—

Concerning the right or duty of the Speaker to vote, the question is not altogether settled. For many years it was unsettled in the lower branch of Congress. Now, however, the law requires the Speaker to vote when it would be decisive. "By the practice of the House," so Follet remarks, "this rule obliges the Speaker to vote: (1) to break a tie, (2) to make a tie, (3) to complete a two-thirds vote, and (4) when his vote is necessary to make a quorum. It has been claimed, however, that the spirit of the rule does not include a negative vote on an even division, and when Mr. Speaker White in the Twenty-Seventh Congress gave such a vote, it was said to be unnecessary. But the ruling now in Congress, and nearly all public assemblies, is that the Speaker should vote on an equal division, even although his vote may be cast in the negative."*—[B.]

243 b. His Right to Vote as Affected by Positive Law.—It seems desirable to state the Speaker's right to vote more fully. If he is not a member of the body over which he presides, he has no right to vote unless this

* Speaker of the House of Rep., 150.

is given to him by positive law, as in the case of the Vice-President of the United States, whose right to give a casting vote is prescribed by the Constitution. The same may be said of the Lieutenant-Governor of many of the States; their right to vote is a constitutional one, otherwise they would have none, because they are not members of the bodies over which they preside. If a Speaker is a member, then he can vote, and no rule of the body would be legal preventing him from exercising it. In other words, his right to vote as a member is not impaired by his election and exercise of the functions of Speaker. From motives of delicacy many prefer not to vote, except in the case of a tie, or to make a tie, and thus prevent a motion from prevailing, but his right to vote in all cases is unquestioned. If he does not vote in the regular order, as the rules prescribed for members require, nevertheless his vote is not lost, and he may afterward insist on his right to vote and exercise it.—[B.]

244. Who Must Vote.—It is a general rule that every member who is in the assembly-room at the time when the question is stated has not only the right but is bound to vote; and, on the other hand, that no mem-

ber can vote who was not in the room at that time.

244 a. Effect of Silence.—The effect of remaining silent is well understood. At a valid meeting of stockholders, if no contrary rule is established by the charter or by-laws, a majority of those voting prevails. Those who have an opportunity to vote and refrain, though they have a majority of the stock, must be held to acquiesce in the result of the votes actually cast.*—[B.]

244 b. Silence is Acquiescence.—When a question is put by the presiding officer, silence is acquiescence with the majority, because each member is supposed to have assented beforehand to the process established to ascertain the general will. But this rule of implied assent does not apply to a measure which is essentially revolutionary, and based on no pre-established process of ascertainment whatever.†—[B.]

244 c. Silence of the Whole Assembly.—Again, if silence of the whole assembly is equivalent to a unanimous vote in the affirmative, silence of a part of the members not voting

* 34 Minn. Rep., 135.

† 4 Wharton, 531.

cannot be counted against the express voice of another part voting. If those present having the right and opportunity to vote refuse to exercise it, and witness without objection the passage of a by-law or other act by the usual mode of voting, counting, and declaring, the objection of an insufficient or invalid vote by reason of not counting non-votes present cannot afterwards be made.*—[B.]

245. Yea and Nay Vote.—The only other form of taking the question which requires to be described is one in general use in this country, by means of which the names of the members voting on the one side and on the other are ascertained and entered in the journal of the assembly. This mode, which is peculiar to the legislative bodies of the United States, is called taking the question by yeas and nays. In order to take a question in this manner it is stated on both sides at once, namely : *As many as are of opinion that, etc., will, when their names are called, answer Yes ; and, As many as are of a different opinion will, when their names are called, answer No ;* the roll of the assembly is then called over by the clerk, and each mem-

* 58 New Hamp. Rep., 187.

ber, as his name is called, rises in his place, and answers *yes* or *no*, and the clerk notes the answer as the roll is called. When the roll has been gone through, the clerk reads over first the names of those who have answered in the affirmative, and then the names of those who have answered in the negative, in order that if he has made any mistake in noting the answer, or if any member has made a mistake in his answer, the mistake of either may be corrected. The names having been thus read over, and the mistakes, if any, corrected, the clerk counts the numbers on each side, and reports them to the presiding officer, who declares the result to the assembly.

245 a. Requirement of Federal Constitution.—By the Constitution of the United States “the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.” And in voting for and against a bill that has been vetoed, the entry must be made without any order. In some of the State legislatures five members are enough to second the call for the yeas and nays; in others three; in no case is a majority required. The reason for requiring only a small

number is, that the wish of the minority for such a record of the action of the members is obviously just.—[B.]

246. Yea and Nay Vote in Mass.—The following is the mode practised in the House of Representatives of Massachusetts (which is by far the most numerous of all the legislative bodies in this country) of taking a question by yeas and nays. The names of the members being printed on a sheet, the clerk calls them in their order; and as each one answers, the clerk (responding to the member at the same time) places a figure in pencil, expressing the number of the answer, at the left or right of the name, according as the answer is yes or no, so that the last figure or number on each side shows the numbers of answers on that side; and the two last numbers or figures represent the respective numbers of the affirmatives and negatives on the division. Thus, at the left hand of the name of the member who first answers *yes* the clerk places a figure 1; at the right hand of the first member who answers *no* he also places a figure 1; the second member that answers *yes* is marked 2; and so on to the end of the list; the side of the name on which the figure is placed denoting whether the an-

answer is *yes* or *no*, and the figure denoting the number of the answer on that side. The affirmatives and negatives are then read separately, if necessary, though this is usually omitted, and the clerk is then prepared, by means of the last figure on each side, to give the numbers to the speaker to be announced to the house. The names and answers are afterwards recorded on the journal.

247. How Long Debate May Continue.—In any of the modes of taking a question, in which it is first put on one side, and then on the other, it is no full question until the negative as well as the affirmative has been put. Consequently, until the negative has been put it is in order for any member, in the same manner as if the division had not commenced, to rise and speak, make motions for amendment or otherwise, and thus renew the debate; and this whether such member was in the assembly-room or not when the question was put and partly taken. In such a case the question must be put over again on the affirmative as well as the negative side, for the reason that members who were not in the assembly-room when the question was first put may have since come in, and also that some of those who

voted may have since changed their minds. When a question is taken by yeas and nays, and the negative as well as the affirmative of the question is stated, and the voting on each side begins and proceeds at the same time, the question cannot be opened and the debate renewed after the voting has commenced.

247 a. Changing Vote.—A member may change his vote, unless it be a ballot, at any time before the result has been declared; but in the United States Senate a Senator, by unanimous consent, may change or withdraw his vote.—[B.]

248. Questions Arising During Division.—If any question arises in a point of order, as, for example, as to the right or the duty of a member to vote during a division, the presiding officer must decide it peremptorily, subject to the revision and correction of the assembly after the division is over. In a case of this kind there can be no debate, though the presiding officer may, if he pleases, receive the assistance of members with their advice, which they are to give sitting, in order to avoid even the appearance of a debate; but this can only be with the leave of the presiding officer, as otherwise the division might be prolonged to

an inconvenient length ; nor can any question be taken, for otherwise there might be division upon division without end.

249. No Decision Without Quorum.—

When, from counting the assembly on a division, it appears that there is not a quorum present, there is no decision, but the matter in question continues in the same state in which it was before the division ; and when afterwards resumed, whether on the same or on some future day, it must be taken up at that precise point.

• CHAPTER XIV.

Of Reconsideration.

250. Decision Usually is Final.—It is a principle of parliamentary law, upon which many of the rules and proceedings are founded, that when a question has been once put to a deliberative assembly, and decided, whether in the affirmative or negative, that decision is the judgment of the assembly, and cannot be again brought into question.

251. Applies to Equivalent Questions.

—This principle holds equally although the question proposed is not the identical question which has already been decided, but only its equivalent; as, for example, where the negative of one question amounts to the affirmative of the other, and leaves no other alternative, these questions are the equivalents of one another, and a decision of the one necessarily concludes the other.

252. Rule Explained.—A common application of the rule as to equivalent questions occurs in the case of an amendment proposed by striking out words, in which it is the invariable practice to consider the negative of striking out as equivalent to the affirmative of agreeing; so that to put a question on agreeing, after a question on striking out is negatived, would be, in effect, to put the same question twice over.

253. When Question Can be Repeated.—The principle above stated does not apply so as to prevent putting the same question in the different stages of any proceeding, as, for example, in legislative bodies, the different stages of a bill; so, in considering reports of committees, questions already taken

and decided before the subject was referred may be again proposed ; and, in like manner, orders of the assembly and instructions or references to committees may be discharged or rescinded.

254. Reasons for Reconsidering.—The inconvenience of this rule, which is still maintained in all its strictness in the British Parliament (though divers expedients are there resorted to [as an explanatory or amending act] to counteract or evade it), has led to the introduction into the parliamentary practice of this country of the motion for *reconsideration* ; which, while it recognizes and upholds the rule in all its ancient strictness, yet allows a deliberative assembly, for sufficient reasons, to relieve itself from the embarrassment and inconvenience which would occasionally result from a strict enforcement of the rule in a particular case.

255. Common Practices.—It has now come to be a common practice in all our deliberative assemblies, and may consequently be considered as a principle of the common parliamentary law of this country, to reconsider a vote already passed, whether affirmatively or negatively.

255 a. How Long the Right Exists.—

All deliberative assemblies have a right, during the same session, to reconsider any vote which they may have taken, and only the final result is operative.—[B.]*

256. Form of.—For this purpose a motion is made and seconded, in the usual manner, that such a vote be reconsidered; and if this motion prevails, the matter stands before the assembly in precisely the same state and condition, and the same questions are to be put in relation to it as if the vote reconsidered had never been passed. Thus, if an amendment by inserting words is moved and rejected, the same amendment cannot be moved again; but the assembly may reconsider the vote by which it was rejected, and then the question will recur on the amendment, precisely as if the former vote had never been passed.

257. Rules of Assemblies for Reconsidering.—It is usual, in legislative bodies, to regulate by a special rule the time, manner, and by whom a motion to reconsider may be made; thus, for example, that it shall be made only on the same or a succeeding day,—by a

* 7 New Jersey Law Rep., 101.

member who voted with the majority,—or at a time when there are as many members present as there were when the vote was passed ; but, where there is no special rule on the subject, a motion to reconsider must be considered in the same light as any other motion, and as subject to no other rules.

257 a. Senate and House Rules of Congress.—In the lower House of Congress, when a motion has been made and carried, or lost, any member of the majority, on the same or succeeding day, may move its reconsideration, and this takes precedence of all other questions except the consideration of a conference report, a motion to adjourn, or take a recess. Furthermore, such a motion cannot be withdrawn after the “succeeding day” without the consent of the House, and any member may call it up for consideration. If made during the last week of the session, action thereon must be immediate. The Senate rule differs in some respects. If a motion to reconsider is lost, or if carried, and the first decision of the reconsidered question is affirmed, a motion to reconsider cannot be renewed without unanimous consent.—[B.]

CHAPTER XV.

Of Committees.

Sect. 1. Their Nature and Functions.

258. How Formed.—It is usual in all deliberative assemblies to take the preliminary (sometimes, also, the intermediate) measures, and to prepare matters to be acted upon in the assembly, by committees composed either of members specially selected for the particular occasion, or appointed beforehand for all matters of the same nature.

259. How Designated.—Committees of the first kind are usually called *select*, the others *standing* (though the former appellation belongs with equal propriety to both), in order to distinguish them from another form of committee constituted either for a particular occasion, or for all cases of a certain kind, which is composed of all the members of the assembly, and therefore denominated a *committee of the whole*.

260. Advantages.—The advantages of proceeding in this mode are manifold. It en-

ables a deliberative assembly to do many things which, from its numbers, it would otherwise be unable to do,—to accomplish a much greater quantity of business, by dividing it among the members, than could possibly be accomplished if the whole body were obliged to devote itself to each particular subject, and to act in the preliminary and preparatory steps with a greater degree of freedom than is compatible with the forms of proceeding usually observed in full assembly.

261. Why Appointed.—Committees are appointed to consider a particular subject, either at large or under special instructions: to obtain information in reference to a matter before the assembly, either by personal inquiry and inspection or by the examination of witnesses; and to digest and put into proper form, for the adoption of the assembly, all resolutions, votes, orders, and other papers with which they may be charged. Committees are commonly said to be the “eyes and ears” of the assembly; it is equally true that, for certain purposes, they are also its “head and hands.”

262. Powers and Functions.—The powers and functions of committees depend chiefly upon the general authority and particu-

lar instructions given them by the assembly at the time of their appointment ; but they may also be, and very often are, further instructed whilst they are in the exercise of their functions ; and sometimes it even happens that these additional instructions wholly change the nature of a committee by charging it with inquiries quite different from those for which it was originally established.

Sect. II. Their Appointment.

263. Standing and Select Committees Appointed Same Way.—In the manner of appointing committees there is no difference between standing and other select committees as to the mode of selecting the members to compose them ; and in reference to committees of the whole, as there is no selection of members, they are appointed simply by the order of the assembly.

264. Number.—In the appointment of select committees, the first thing to be done is to fix upon the number. This is usually effected in the same manner that blanks are filled, namely, by members proposing, without the formality of a motion, such numbers as they please, which are then separately put to the

question, beginning with the largest and going regularly through to the smallest, until the assembly comes to a vote.

265. Selecting Committees.—The number being settled, there are three modes of selecting the members, to wit, by the appointment of the presiding officer,—by ballot,—and by nomination and vote of the assembly ; the first sometimes in virtue of a standing rule, sometimes in pursuance of a vote of the assembly in a particular case ; the second always in pursuance of a vote ; the last is the usual course where no vote is taken.

266. Usually Named by Presiding Officer.—In deliberative assemblies, whose sittings are of considerable length as legislative bodies, it is usual to provide by a standing rule that, unless otherwise ordered in a particular case, all committees shall be named by the presiding officer. Where this is the case, whenever a committee is ordered, and the number settled, the presiding officer at once names the members to compose it. Sometimes, also, the rule fixes the number of which, unless otherwise ordered, committees shall consist. This mode of appointing a committee is frequently resorted to where there is no rule on the subject.

267. Selection by Ballot.—When a committee is ordered to be appointed by ballot, the members are chosen by the assembly, either singly or all together, as may be ordered, in the same manner that other elections are made; and in such elections, as in other cases of the election of the officers of the assembly, a majority of all the votes given in is necessary to a choice.

268. Selection by Vote.—When a committee is directed to be appointed by nomination and vote, the names of the members proposed are put to the question singly, and approved or rejected by the assembly by a vote taken in the usual manner. If the nomination is directed to be made by the presiding officer, he may propose the names in the same manner or all at once; the former mode being the most direct and simple, the latter enabling the assembly to vote more understandingly upon the several names proposed. When the nomination is directed to be made at large, the presiding officer calls upon the assembly to nominate; and, names being mentioned accordingly, he puts to vote the first name he hears.

269. Revival of Committee.—It is also a compendious mode of appointing a committee

to revive one which has already discharged itself by a report ; or by charging a committee appointed for one purpose with some additional duty, of the same or of a different character.

270. Why Bill Should be Referred to Friendly Committee.—In regard to the appointment of committees, so far as the selection of the members is concerned, it is a general rule in legislative bodies, when a bill is to be referred, that none who speak directly against the body of it are to be of the committee, for the reason that he who would totally destroy will not amend ; but that, for the opposite reason, those who only take exceptions to some particulars in the bill are to be of the committee. This rule supposes the purpose of the commitment to be not the consideration of the general merits of the bill, but the amendment of it in its particular provisions, so as to make it acceptable to the assembly.

271. Majority Should be Friendly.—This rule, of course, is only for the guidance of the presiding officer and the members, in the exercise of their discretion ; as the assembly may refuse to excuse from serving, or may itself appoint on a committee, persons who are

opposed to the subject referred. It is customary, however, in all deliberative assemblies, to constitute a committee of such persons (the mover and seconder of a measure being of course appointed), a majority of whom, at least, are favorably inclined to the measure proposed. [Practically the majority is taken from the political party dominant in the assembly, because a partisan measure is expected and desired.—*Ed.*]

272. Notification of Appointment.—When a committee has been appointed in reference to a particular object, it is the duty of the secretary of the assembly to make out a list of the members, together with a certified copy of the authority or instructions under which they are to act, and to give the papers to the member first named on the list of the committee, if convenient, but, otherwise, to any other member of the committee.

Sect. III. Their Organization and Manner of Proceeding.

273. Who is Chairman.—The person first named on a committee acts as its chairman, or presiding officer, so far as relates to the preliminary steps to be taken, and is usually

permitted to do so through the whole proceedings; but this is a matter of courtesy, every committee having a right to elect its own chairman, who presides over it, and makes the report of its proceedings to the assembly.

274. Meetings.—A committee is properly to receive directions from the assembly as to the time and place of its meeting, and cannot regularly sit at any other time or place; and it may be ordered to sit immediately, whilst the assembly is sitting, and make its report forthwith.

275. When Committee Cannot Sit.—When no directions are given, a committee may select its own time and place of meeting; but, without a special order to that effect, it is not at liberty to sit whilst the assembly sits; and, if a committee is sitting when the assembly comes to order after an adjournment, it is the duty of the chairman to rise instantly, on being certified of it, and, with the other members, to attend the service of the assembly.

276. Manner of Proceeding.—In regard to its forms of proceeding, a committee is essentially a miniature assembly—it can only act when regularly assembled together as a committee, and not by separate consultation and

consent of the members; nothing being the agreement or report of a committee but what is agreed to in that manner; a vote taken in committee is as binding as a vote of the assembly; a majority of the members is necessary to constitute a quorum for business, unless a larger or smaller number has been fixed by the assembly itself; and a committee has full power over whatever may be committed to it, except that it is not at liberty to change the title or subject.

277. Time and Place of Meeting.—A committee which is under no directions as to the time and place of meeting may meet when and where it pleases, and adjourn itself from day to day, or otherwise, until it has gone through with the business committed to it; but if it is ordered to meet at a particular time, and it fails of doing so for any cause, the committee is closed, and cannot act without being newly directed to sit.

278. Disorder.—Disorderly words spoken in a committee must be written down in the same manner as in the assembly; but the committee, as such, can do nothing more than report them to the assembly for its animadversion; neither can a committee punish disorderly

conduct of any kind, but must report it to the assembly.

279. Proceedings in.—When any paper is before a committee, whether select or of the whole, it may either have originated with the committee or have been referred to them ; and in either case, when the paper comes to be considered, the course is for it to be first read entirely through by the clerk of the committee, if there is one, otherwise by the chairman ; and then to be read through again by paragraphs by the chairman, pausing at the end of each paragraph, and putting questions for amending, either by striking out or inserting, if proposed. This is the natural order of proceeding in considering and amending any paper, and is to be strictly adhered to in the assembly ; but the same strictness does not seem necessary in a committee.

280. Treatment of Original Paper.—If the paper before a committee is one which has originated with the committee, questions are put on amendments proposed, but not on agreeing to the several paragraphs of which it is composed, separately, as they are gone through with ; this being reserved for the close, when a question is to be put on the whole for

agreeing to the paper as amended or un-amended.

281. Treatment of Referred Papers.—

If the paper be one which has been referred to the committee, they proceed as in the other case to put questions of amendment, if proposed, but no final question on the whole; because all the parts of the paper having been passed upon, if not adopted by the assembly as the basis of its action, stand, of course, unless altered or struck out by a vote of the assembly. And even if the committee are opposed to the whole paper, and are of opinion that it cannot be made good by amendments, they have no authority to reject it; they must report it back to the assembly, without amendments (specially stating their objections, if they think proper), and there make their opposition as individual members.

282. Report on Original Paper.—In the case of a paper originating with a committee, they may erase or interline it as much as they please; though, when finally agreed to, it ought to be reported in a clear draft, fairly written, without erasure or interlineation.

283. Report on Referred Paper.—But, in the case of a paper referred to a committee.

they are not at liberty to erase, interline, blot, disfigure, or tear it, in any manner ; but they must, in a separate paper, set down the amendments they have agreed to report, stating the words which are to be inserted or omitted, and the places where the amendments are to be made, by references to the paragraph or section, line, and word.

284. Amendments by Committee.—If the amendments agreed to are very numerous and minute, the committee may report them all together, in the form of a new and amended draft.

285. Final Action in Committee.—When a committee has gone through the paper, or agreed upon a report on the subject which has been referred to them, it is then moved by some member, and thereupon voted, that the committee rise, and that the chairman, or some other member, make their report to the assembly.

Sect. IV. Their Report.

286. Making Report in the Assembly.—When the report of a committee is to be made, the chairman, or member appointed to make the report, standing in his place, informs the assembly that the committee to whom was

referred such a subject or paper have, according to order, had the same under consideration, and have directed him to make a report thereon, or to report the same with sundry amendments, or without amendment, as the case may be, which he is ready to do when the assembly shall please; and he or any other member may then move that the report be now received. On this motion being made, the question is put whether the assembly will receive the report at that time; and a vote passes, accordingly, either to receive it then, or fixing upon some future time for its reception.

287. Delivery to Clerk.—At the time when, by the order of the assembly, the report is to be received, the chairman reads it in his place, and then delivers it, together with all the papers connected with it, to the clerk at the table, where it is again read, and then lies on the table until the time assigned, or until it suits the convenience of the assembly to take it up for consideration.

288. Amendments.—If the report of the committee is of a paper with amendments, the chairman reads the amendments with the coherence in the paper, whatever it may be, and opens the alterations, and the reasons of the

committee for the amendments, until he has gone through the whole ; and when the report is read at the clerk's table, the amendments only are read without the coherence.

289. Reports Received Without Motion.—In practice, however, the formality of a motion and vote on the reception of a report is usually dispensed with ; though, if any objection is made, or if the presiding officer sees any informality in the report, he should decline receiving it without a motion and vote ; and a report, if of any considerable length, is seldom read, either by the chairman in his place or by the clerk at the table, until it is taken up for consideration. In legislative assemblies the printing of reports generally renders the reading of them unnecessary.

290. Dissolution of Committee.—The report of a committee being made and received, the committee is dissolved, and can act no more without a new power ; but their authority may be revived by a vote, and the same matter recommitted to them. If a report, when offered to the assembly, is not received, the committee is not thereby discharged, but may be ordered to sit again, and a time and place appointed accordingly.

291. Report May be Recommitted.—

When a subject or paper has been once committed and a report made upon it, it may be recommitted either to the same or a different committee; and if a report is recommitted before it has been agreed to by the assembly, what has heretofore passed in the committee is of no validity; the whole question being again before the committee as if nothing had passed there in relation to it.

292. Forms of Report.—The report of a committee may be made in three different forms, namely: *first*, it may contain merely a statement of facts, reasoning, or opinion, in relation to the subject of it, without any specific conclusion; or, *second*, a statement of facts, reasoning, or opinion, concluding with a resolution, or series of resolutions, or some other specific proposition; or, *third*, it may consist merely of such resolutions, or propositions, without any introductory part.

293. Question on Receiving.—The first question on a report is, in strictness, on receiving it, though in practice this question is seldom or never made; the consent of the assembly, especially in respect to the report of a committee of the whole, being generally presumed,

unless objection is made. When a report is received, whether by general consent or upon a question and vote, the committee is discharged, and the report becomes the basis of the future proceedings of the assembly on the subject to which it relates.

294. Treated Like Other Questions.—

At the time assigned for the consideration of a report, it may be treated and disposed of precisely like any other proposition, and may be amended in the same manner, both in the preliminary statement, reasoning, or opinion, if it contain any, and in the resolutions or other propositions with which it concludes; so if it consist merely of a statement, etc., without resolutions, or of resolutions, etc., without any introductory part.

295. Adoption.—The final question on a report, whatever form it may have, is usually stated on its acceptance; and, when accepted, the whole report is adopted by the assembly, and becomes the statement, reasoning, opinion, resolution, or other act, as the case may be, of the assembly; the doings of a committee, when agreed to, adopted, or accepted, becoming the acts of the assembly, in the same manner as if done originally by the

assembly itself, without the intervention of a committee.

296. Statement of Final Question.—It would be better, however, and in stricter accordance with parliamentary rules, to state the final question on a report according to the form of it. If the report contain merely a statement of facts, reasoning, or opinion, the question should be on acceptance; if it also conclude with resolutions, or other specific propositions of any kind,—the introductory part being consequently merged in the conclusion,—the question should be on agreeing to the resolutions, or on adopting the order or other proposition, or on passing or coming to the vote recommended by the committee; and the same should be the form of the question when the report consists merely of resolutions, etc., without any introductory part.

Sect. V. Committee of the Whole.

297. How Formed.—When a subject has been ordered to be referred to a committee of the whole, the form of going from the assembly into committee is for the presiding officer, at the time appointed for the committee to sit, on motion made and seconded for the purpose, to

put the question that the assembly do now resolve itself into a committee of the whole to take under consideration such a matter, naming it. If this question is determined in the affirmative, the result is declared by the presiding officer, who, naming some member to act as chairman of the committee, then leaves the chair and takes a seat elsewhere like any other member, and the person appointed chairman seats himself (not in the chair of the assembly, but) at the clerk's table.

298. Presiding Officer Names Chairman.—The chairman named by the presiding officer is generally acquiesced in by the committee; though, like all other committees, a committee of the whole have a right to elect a chairman for themselves, some member, by general consent, putting the question.

299. Quorum.—The same number of members is necessary to constitute a quorum of a committee of the whole as of the assembly; and if the members present fall below a quorum at any time in the course of the proceedings, the chairman, on a motion and question, rises,—the presiding officer thereupon resumes the chair.—and the chairman informs the assembly

(he can make no other report) of the cause of the dissolution of the committee.

300. Presence of Presiding Officer.—

When the assembly is in committee of the whole, it is the duty of the presiding officer to remain in the assembly-room, in order to be at hand to resume the chair in case the committee should be broken up by some disorder, or for want of a quorum, or should rise, either to report progress or to make their final report upon the matter committed to them.

300 a. Speaker May Resume Chair to Suppress Disorder.—Though the speaker has a right to resume the chair to suppress disorder, he hesitates to do so unless clearly authorized by the standing rules or an order of the House. In 1880 the House was in committee of the whole on the refunding of the national debt, and two of the members fiercely denounced each other, and nearly came to blows. For the purpose of restoring order Mr. Speaker Randall took the chair, asserting that he was justified by parliamentary propriety and practice in doing so, and by his direction the sergeant-at-arms went among the members with his mace of office and restored order. The

speaker then yielded the chair to the chairman of the committee.—[B.]

301. Duty of Clerk.—The clerk of the assembly does not act as clerk of the committee (this is the duty of the assistant clerk in legislative bodies), or record in his journal any of the proceedings or votes of the committee, but only their report as made to the assembly.

302. Proceedings in.—The proceedings in a committee of the whole, though, in general, similar to those in the assembly itself and in other committees, are yet different in some respects, the principal of which are the following:

303. Previous Question Cannot be Moved.—*First.* The previous question cannot be moved in a committee of the whole. The only means of avoiding an improper discussion is to move that the committee rise; and, if it is apprehended that the same discussion will be attempted on returning again into committee, the assembly can discharge the committee and proceed itself with the business, keeping down any improper discussion by means of the previous question.

304. Cannot Adjourn.—*Second.* A committee of the whole cannot adjourn, like other

committees, to some other time or place, for the purpose of going on with and completing the consideration of the subject referred to them; but if their business is unfinished at the usual time for the assembly to adjourn, or, for any other reason, they wish to proceed no further at a particular time, the form of proceeding is for some member to move that the committee rise, report progress, and ask leave to sit again; and if this motion prevails, the chairman rises, —the presiding officer resumes the chair of the assembly,—and the chairman of the committee informs him that the committee of the whole have, according to order, had under their consideration such a matter, and have made some progress therein; but, not having had time to go through with the same, have directed him to ask leave for the committee to sit again. The presiding officer thereupon puts a question on giving the committee leave to sit again, and also on the time when the assembly will again resolve itself into a committee. If leave to sit again is not granted, the committee is of course dissolved.

305. Unlimited Debate.—*Third.* In a committee of the whole every member may speak as often as he pleases, provided he can

obtain the floor ; whereas, in the assembly itself, no member can speak more than once.

306. References to Other Committees.

—*Fourth.* A committee of the whole cannot refer any matter to another committee ; but other committees may and do frequently exercise their functions, and expedite their business by means of sub-committees of their own members.

307. Presiding Officer May Debate.—

Fifth. In a committee of the whole the presiding officer of the assembly has a right to take a part in the debate and proceedings in the same manner as any other member.

308. Punishment for Disorderly Conduct.—

Sixth. A committee of the whole, like a select committee, has no authority to punish a breach of order, whether of a member or stranger, but can only rise and report the matter to the assembly, who may proceed to punish the offender. Disorderly words must be written down in committee in the same manner as in the assembly, and reported to the assembly for their animadversion.

309. Motion Need Not be Seconded.—

The foregoing are the principal points of difference between proceedings in the assembly and

in committees of the whole; in most other respects they are precisely similar. It is sometimes said that in a committee of the whole it is not necessary that a motion should be seconded. There is no foundation, however, either in reason or parliamentary usage, for this opinion.

310. Rising of Committee.—When a committee of the whole have gone through with the matter referred to them, a member moves that the committee rise, and that the chairman (or some other member) report their proceedings to the assembly; which being resolved, the chairman rises and goes to his place,—the presiding officer resumes the chair of the assembly,—and the chairman informs him that the committee have gone through with the business referred to them, and that he is ready to make their report when the assembly shall think proper to receive it. The time for receiving the report is then agreed upon, and at the time appointed it is made and received, in the same manner as that of any other committee (286).

311. Receiving a Report.—It sometimes happens that the formality of a motion and question as to the time of receiving a report is

dispensed with. If the assembly are ready to receive it at the time, they cry out, "now, now," whereupon the chairman proceeds; if not then ready, some other time is mentioned, as "to-morrow," or "Monday," and that time is fixed by general consent. But when it is not the general sense of the assembly to receive the report at the time, it is better to agree upon and fix the time by a motion and question.

Concluding Remarks.

312. Suggestions.—In bringing this treatise to a close, it will not be deemed out of place to make a suggestion or two for the benefit of those persons who may be called upon to act as presiding officers for the first time.

313. Presiding Officer Should be Attentive.—One of the most essential parts of the duty of a presiding officer is to give the closest attention to the proceedings of the assembly, and especially to what is said by every member who speaks. Without the first, confusion will be almost certain to occur, wasting the time, perhaps disturbing the harmony, of the assembly. The latter is not merely a de-

cent manifestation of respect for those who have elevated him to an honorable station, but it tends greatly to encourage timid or diffident members, and to secure them a patient and attentive hearing; and it often enables the presiding officer, by a timely interference, to check offensive language in season to prevent scenes of tumult and disorder, such as have sometimes disgraced our legislative halls.

314. Observing Rules.—It should be constantly kept in mind by a presiding officer that in a deliberative assembly there can regularly be but one thing done or doing at the same time. This caution he will find particularly useful to him whenever a quarrel arises between two members in consequence of words spoken in debate. In such a case he will do well to require that the regular course of proceedings shall be strictly pursued, and will take care to restrain members from interfering in any other manner. In general, the solemnity and deliberation with which this mode is attended will do much to allay heat and excitement, and to restore harmony and order in the assembly.

315. Object of Rules.—A presiding officer will often find himself embarrassed by the difficulty, as well as the delicacy, of decid-

ing points of order, or giving directions as to the manner of proceeding. In such cases it will be useful for him to recollect that—

The great purpose of all rules and forms is to subserve the will of the assembly, rather than to restrain it; to facilitate, and not to obstruct, the expression of their deliberate sense.

CONSTITUTION

OF THE

UNITED STATES.

PREAMBLE.

WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

THE LEGISLATIVE DEPARTMENT.

SECTION I.—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SEC. II.—I. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any State, the executive authority

thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SEC. III.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years ; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year ; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States

shall be President of the Senate, but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. IV.—1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. V.—1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. VI.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their

respective houses, and in going to and returning from the same ; and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time ; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SEC. VII.—1. All bills for raising revenue shall originate in the House of Representatives ; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States ; if he approve, he shall sign it ; but if not, he shall return it, with his objections, to that house in which it shall have originated ; who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered ; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses

shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him; or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. VIII.—The Congress shall have power :

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States :

2. To borrow money on the credit of the United States :

3. To regulate commerce with foreign na-

tions, and among the several States, and with the Indian tribes :

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

5. To coin money, regulate the value thereof and of foreign coin, and to fix the standard of weights and measures :

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

7. To establish post-offices and post-roads :

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

9. To constitute tribunals inferior to the Supreme Court :

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

12. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

13. To provide and maintain a navy :

14. To make rules for the government and regulation of the land and naval forces :

15. To provide for calling forth the militia

to execute the laws of the Union, suppress insurrections, and repel invasions :

16. To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States: reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States: and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings:—and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SEC. IX.—1. The immigration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such im-

portation not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SEC. X.—I. No State shall enter into any treaty, alliance, or confederation; grant letters

of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of Congress.

3. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

THE EXECUTIVE DEPARTMENT.

SECTION I.—1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years; and, together with the Vice-President, chosen for the same term, be elected as follows . . .

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose a President. But in choosing the President, the votes shall be taken by States,

the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after choice of the President, the person having the greatest number of votes of the electors shall be Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President: neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall

act accordingly until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation :

“ I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

SEC. II.—I. The President shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and,

by and with the advice and consent of the Senate, shall appoint ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SEC. III.—1. He shall, from time to time, give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all officers of the United States.

SEC. IV.—The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for,

and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

THE JUDICIAL DEPARTMENT.

SECTION I.—The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SEC. II.—1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in

which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as Congress may by law have directed.

SEC. III.—I. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

MISCELLANEOUS PROVISIONS.

SECTION I.—Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and Congress may, by general laws, prescribe

the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. II.—I. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. III.—I. New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, or any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of Congress.

2. Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this

Constitution shall be so construed as to prejudice any claims of the United States, or of any other particular State.

SEC. IV.—The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as parts of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

ARTICLE I.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. II.—A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ART. III.—No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ART. IV.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants

shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ART. V.—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ART. VI.—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ART. VII.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be

otherwise re-examined in any court of the United States, than according to the rules of the common law.

ART. VIII.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. IX.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ART. X.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ART. XI.—The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ART. XII.—I. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed

to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed: and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two

highest numbers on the list the Senate shall choose the Vice-President. A quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ART. XIII.—*Section I.*—Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. II.—Congress shall have power to enforce this Article by appropriate legislation.

ART. XIV.—*Section I.*—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. II.—Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for

President or Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. III.—No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Sec. IV.—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. V.—The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

ART. XV.—Section I.—The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. II.—The Congress shall have power to enforce this Article by appropriate legislation.

ART. XVI.—The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment, among the several States, and without regard to any census or enumeration.

ART. XVII.—Section I.—The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

Sec. II.—When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Pro-*

vided, That the Legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the Legislature may direct.

Sec. III.—This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

DECLARATION OF INDEPENDENCE.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of Nature and Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form as to them shall

seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless

those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of the public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolution to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the State remaining, in the mean time, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount of payment of their salaries.

He has erected a multitude of new offices,

and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation :

For quartering large bodies of armed troops among us :

For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these States :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas to be tried for pretended offenses :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act

which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the **representatives** of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, con-

clude peace, contract alliances, establish commerce, and do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.



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